

No. 16230 ✓

United States
Court of Appeals
for the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

vs.

LO BUE BROTHERS, a Partnership; MARIO
LO BUE, FRED LO BUE, and JOSEPH LO
BUE, Partners, and WILLIAM LUTHER
WOODALL,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Northern Division.

FILED

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PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States District Court, Southern District of
California, Northern Division

Civil No. 1758—ND

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LO BUE BROTHERS, a Partnership; MARIO
LO BUE, FRED LO BUE, and JOSEPH LO
BUE, Partners; and WILLIAM LUTHER
WOODALL,

Defendants.

COMPLAINT FOR RECOVERY
FOR FORFEITURES

The United States of America complains of the
defendants and for cause of action alleges:

I.

This is a civil action brought by the United States
of America, acting through the United States At-
torney for the Southern District of California, at
the request of the Secretary of Agriculture, Juris-
diction of this court arises under paragraphs (5)
and (7) of Section 608a of Title 7, and Sections 1345
and 1355 of Title 28 of the United States Code. [2*]

II.

The defendants, Mario Lo Bue, Fred Lo Bue and
Joseph Lo Bue, are partners operating an orange

*Page numbering appearing at foot of page of original Certified
Transcript of Record.

packing establishment as a partnership under the trade name Lo Bue Brothers (hereinafter referred to as "Lo Bue") at Lindsay, California, within the jurisdiction of this court. Defendant William Luther Woodall is the sales manager for Lo Bue Brothers and resides at Lindsay, California, within the jurisdiction of this court.

III.

Pursuant to the provisions of Title 7, Sec. 608c of the United States Code, the Secretary of Agriculture (hereinafter referred to as the "Secretary") issued Marketing Order No. 14, as amended, Regulating the Handling of Navel Oranges Grown in the State of Arizona and a Designated Part of the State of California (hereinafter referred to as the "Order") effective September 22, 1953.

IV.

Section 914.66 of the Order establishes four geographical prorate districts for the purpose of allotting shipments of oranges, as follows:

a. District 1 shall include that portion of the State of California between the 35th Parallel and the 37th Parallel, but shall exclude that portion of Kern County situated south of the Kern River. [3]

b. District 2 shall include that portion of the State of California which is south of the 35th Parallel, but shall exclude Imperial County, California, and that portion of Riverside County, California, situated south and east of White Water, California.

c. District 3 shall include the State of Arizona, Imperial County, California, and that portion of Riverside County, California, situated south and east of White Water, California.

d. District 4 shall include that portion of Kern County, California, situated south of the Kern River.

V.

Acting pursuant to the provisions of the Order, the Secretary fixed the quantity of navel oranges grown in Prorate District 1 which could be handled during the weekly period covered by Navel Orange Regulation No. 81 commencing at 12:01 a.m. on April 1 and ending at 12:01 a.m. on April 8, 1956, at 277,200 cartons (21 F.R. 2037) and during the weekly period covered by Navel Orange Regulation No. 82 commencing at 12:01 a.m. on April 8 and ending at 12:01 a.m. on April 15, 1956, at 231,000 cartons. (21 F.R. 2267.) [4]

VI.

Pursuant to Section 914.53 of the Order, Lo Bue acting through one of the partners, Mario Lo Bue, filed with the Navel Orange Administrative Committee (hereinafter referred to as the "Committee"), the agency appointed by the Secretary to administer the Order, an application for a prorate base and for allotment to ship navel oranges produced in Prorate District 1. Based upon such application, and the determinations of the Committee, Lo Bue was found, during the weekly period covered by Navel Orange Regulation No. 81 (12:01

a.m., April 1, to 12:01 a.m., April 8) to have available for current shipment 3.7622 per cent of all navel oranges produced in District 1 which were available for current shipment during such period, and was allotted 10,428 cartons of the 277,200 cartons fixed by the Secretary as the quantity of navel oranges produced in Prorate District 1 that could be handled during such period. ($277,200 \times 3.7622$.)

VII.

In addition to the 10,428 cartons of allotment issued to Lo Bue during the weekly period covered by Navel Orange Regulation No. 81 (12:01 a.m., April 1, to 12:01 a.m., April 8) there was paid back to Lo Bue by other handlers, pursuant to Section 914.57 of the Order, 892 cartons of allotment which had previously been loaned by Lo Bue. Under the provisions of Section 914.55 [5] of the Order, Lo Bue was permitted to overship his base allotment of 10,428 cartons by 10%, or 1,043 cartons, making a total of 12,363 cartons of navel oranges which Lo Bue was authorized to handle under the provisions of the Order and the regulations of the Secretary during the weekly period covered by Navel Orange Regulation No. 81.

VIII.

During the weekly period covered by Navel Orange Regulation No. 82 (12:01 a.m., April 8, to 12:01 a.m., April 15) it was determined by the Committee that Lo Bue had available for current shipment 3.7671 per cent of all navel oranges produced in District 1 available for current shipment during

such period, and was allotted 8,702 cartons of the 231,000 cartons fixed by the Secretary as the quantity of navel oranges that should be handled during such period. (231,000 x 3.7671.)

IX.

In addition to the 8,702 cartons of allotment issued to Lo Bue during the weekly period covered by Navel Orange Regulation No. 82 (12:01 a.m., April 8, to 12:01 a.m., April 15) there was paid back to Lo Bue by other handlers 36 cartons of allotment previously loaned by Lo Bue, making a total of 8,738 cartons of allotment issued or paid back to Lo Bue during this period. Pursuant to Section 914.55 of the Order, Lo Bue was required to deduct from the 8,738 cartons the [6] 1,043 cartons of overshipment made during the weekly period covered by Navel Orange Regulation No. 81 and to repay 262 cartons of allotment which they had previously borrowed from other handlers. (Section 914.57 of the Order.) This left a balance of 7,433 cartons of navel oranges which Lo Bue was authorized to handle under the provisions of the Order and the regulations of the Secretary during the weekly period covered by Navel Orange Regulation No. 82. (12:01 a.m., April 8, to 12:01 a.m., April 15.)

X.

Although Lo Bue was authorized under the Order and the regulations of the Secretary to handle 12,363 cartons of navel oranges produced in District 1 during the weekly period covered by Navel Orange

Regulation No. 81 (12:01 a.m., April 1, to 12:01 a.m., April 8) they did actually handle during such regulation period a total of 35,779 cartons, and did wilfully exceed their quota or allotment by 23,416 cartons.

XI.

Although Lo Bue was authorized under the Order and the regulations of the Secretary to handle 7,433 cartons of navel oranges produced in District 1 during the weekly period covered by Navel Orange Regulation No. 82 (12:01 a.m., April 8, to 12:01 a.m., April 15) they did actually handle during such regulation period 16,281 cartons, and did wilfully exceed their quota [7] or allotment by 8,848 cartons, 2,933 cartons of which were handled in excess of their allotment prior to April 9, 1956, the date on which Lo Bue filed with the Secretary a petition under Section 608c(15)(A) of the act. (7 U.S.C. 608c(15)(A).)

XII.

On or about March 15 and March 29, 1956, the defendant, William Luther Woodall, Lo Bue's sales manager, appeared at the meetings of the Naval Orange Administrative Committee in Los Angeles, California, and urged that handlers shipping oranges produced in District 1 be issued 75% of all of the allotment issued to all handlers in California and that the handlers shipping oranges produced in District 2 be issued only 25% of all of the allotment issued to all handlers in California. He then stated to the Committee that he was going

to ship the fruit regardless of what the Committee did.

XIII.

On or about March 29, 1956, Defendant William Luther Woodall, following a meeting of the committee, in conversation with M. T. Coogan, manager of the Committee stated that he (Woodall) had a plan whereby he was going to ship all of his oranges, and that, "Of course, I am not going to tell you when I am going to do this." [8]

XIV.

Thereafter Lo Bue, acting through their sales manager, William Luther Woodall, did sell and ship oranges produced in District 1 in violation of the Order and the regulations of the Secretary, and did wilfully exceed their quotas or allotments as set forth in paragraphs X and XI hereof and did make the sales and shipments as set forth in Appendix A attached hereto and made a part hereof, and the defendant, William Luther Woodall, did knowingly participate in and aid in the exceeding of such quotas and allotments by Lo Bue in that he did negotiate the sales and did sell the navel oranges handled by Lo Bue in excess of their allotments knowing that such handling was in excess of Lo Bue's allotments.

XV.

The 26,349 cartons of navel oranges produced in District 1 which Lo Bue handled in excess of their allotment prior to April 9, 1956, were sold to various customers throughout the United States, and

Lo Bue received the sum of approximately \$49,870.74 for the sale of such oranges, which sum was the then current market value of such oranges. A complete list of the sales made during the weekly periods covered by Navel Orange Regulations Nos. 81 and 82 prior to April 9, 1956, which were in excess of Lo Bue's allotment is shown on Appendix A attached. Three [9] times this sum which plaintiff is entitled to recover from the defendants is \$149,612.22.

Wherefore Plaintiff Prays:

1. For judgment against defendants in the sum of One Hundred Forty-nine Thousand Six Hundred Twelve Dollars and Twenty-two Cents (\$149,612.22) being an amount equal to three times the then current market value of the above-described oranges.

2. Cost of this action.

3. Such other relief as the court may deem proper.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant United States Attorney, Chief of the Civil
Division;

JORDAN A. DREIFUS,
Assistant United States
Attorney;

By /s/ JORDAN A. DREIFUS,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

Appendix A

[Appendix A attached to the foregoing is identical to Appendix A attached to the Stipulation of Facts and issues, see page 33 of this printed record.]

[Endorsed]: Filed April 25, 1957. [10]

[Title of District Court and Cause.]

ANSWER

Come Now the above-named defendants, and for answer to the complaint on file herein admit, deny, and allege as follows:

First Defense

Defendants allege that the complaint fails to state a claim against defendants upon which relief can be granted.

Second Defense

I.

Defendants deny that this Court has jurisdiction of this action under the statutory provisions referred to in paragraph I of said complaint, or otherwise, or at all.

II.

Defendants allege that they are without knowledge [13] or information sufficient to form a belief as to the truth of the allegations contained in para-

graph V of said complaint, and upon that ground deny each and all of the allegations therein.

III.

Defendants admit that Defendant Lo Bue Brothers, a partnership, filed with the Navel Orange Administrative Committee an application for a pro-rate base and for allotments to ship navel oranges produced in Prorate District 1.

Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of any of the other allegations contained in paragraph VI of said complaint, and upon that ground deny each and all of the other allegations therein. Defendants allege that if the Secretary purported to limit and restrict the quantity of navel oranges produced in Prorate District 1 that could be handled during the period referred to in paragraph VI of said complaint as therein alleged, he acted contrary to law in so doing.

IV.

Answering paragraph VII of said complaint, defendants deny that Defendant Lo Bue Brothers, a partnership, was authorized to handle no more than 12,363 cartons of naval oranges during the period referred to in said paragraph VII.

Further answering said paragraph VII, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of any of the other allegations contained therein,

and upon that ground deny each and all of the other allegations therein.

V.

Defendants alleges that they are without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph VIII of said complaint, and [14] upon that ground deny each and all of the allegations therein. Defendants alleges that if the Secretary purported to limit and restrict the quantity of navel oranges produced in Prorate District 1 that could be handled during the period referred to in paragraph VIII of said complaint as therein alleged, he acted contrary to law in so doing.

VI.

Answering paragraph IX of said complaint, defendants deny that Defendant Lo Bue Brothers, a partnership, was authorized to handle no more than 7,433 cartons of navel oranges during the period referred to in said paragraph IX.

Further answering said paragraph IX, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of any of the other allegations contained therein, and upon that ground deny each and all of the other allegations therein.

VII.

Defendants deny, generally and specifically, each and all of the allegations contained in paragraphs X and XI of said complaint.

VIII.

Defendants deny that Defendant William Luther Woodall made the statement attributed to him in paragraph XII of said complaint.

IX.

Defendants deny, generally and specifically, each and all of the allegations contained in paragraphs XIII, XIV, and XV of said complaint.

Third Defense

I.

That Defendant Lo Bue Brothers, a partnership, is a [15] grower, handler and shipper of navel oranges in Tulare County, California, in the area known as the Central California District, and designated by the Secretary of Agriculture as Prorate District 1. In addition to handling and shipping its own fruit, said defendant handles and ships oranges on consignment for other growers, in intrastate and interstate commerce.

The normal shipping season for Central California navel oranges ends not later than April 1st of each year, experience having proved that navel oranges from said district held beyond that date deteriorate so rapidly that they have little or no commercial value. Consequently, it has been the uniform practice prior to the navel orange shipping season of 1956 to terminate all restrictions on shipments from said district not later than March 25th of each year.

In the year 1956 the Navel Orange Administrative Committee, with the approval of the Secretary of Agriculture, reduced the quantities of Central California navel oranges permitted to be marketed week by week during the shipping season so far below normal that a large quantity of such oranges remained unharvested and unshipped at the end of March, and said Committee indicated that it intended to continue to restrict weekly shipments of such oranges well into the month of May.

Meanwhile, Central California navel oranges had come into competition with Southern California navel oranges, which generally mature later and have a much longer historical life. Market resistance to the Central California fruit had been rapidly developing, and by April 2, 1956, there was a differential of from 75c to \$1.00 per carton in favor of Southern California fruit, due to its superior quality. Continuing deterioration of the Central California fruit would make it practically worthless after the week commencing April 2nd.

Continuation of the Navel Orange Administrative Committee's said policy of prorating shipment would have meant [16] that said defendant would be able to ship only about 33 cars of navel oranges between April 2nd and May 6th, 1956, and would still have had approximately 40 cars left on that date. All such fruit unshipped after the week of April 2nd would be a total loss.

The Navel Orange Administrative Committee had been operating with only one member representing

Central California. While so operating it had extended and proposed to extend the marketing period for Central California fruit some eight weeks beyond its historical life, while extending the marketing period for Southern California fruit less than two weeks past its historical life, thus discriminating in favor of the Southern California growers, handlers and shippers.

II.

That on April 6th, 1956, and prior to the shipment by Defendant Lo Bue Brothers, a partnership, of any navel oranges alleged in plaintiff's complaint to have been in excess of said defendant's quota or allotment, said defendant duly filed with the Secretary of Agriculture, at Washington, D. C., a petition for relief from Order No. 14, and particularly from the obligations imposed upon said defendant in connection therewith, pursuant to and in accordance with the provisions of Section 608c(15)(A) of the Act. (7 U.S.C. 608c(15)(A).) That in said petition said defendant set forth the matters and things alleged in paragraph I above, alleged that the action of the Navel Orange Administrative Committee, approved by the Secretary of Agriculture, in restricting the shipment of Central California navel oranges beyond their historical life was arbitrary, capricious, unreasonable, inequitable, discriminatory, oppressive, unfair and unjust, that the declared policy and purpose of the Act was thereby defeated, and that said defendant and its growers were thereby being deprived of their property with-

out due process of law, and their property had been and was thereby being taken, confiscated, and destroyed without [17] compensation therefor, all in violation of the Fifth Amendment to the Constitution of the United States. That in and by said petition said defendant prayed that the Secretary of Agriculture grant said defendant a hearing thereon, in accordance with the provisions of Section 608e (15)(A) of the Act and the regulations made by the Secretary of Agriculture thereunder, that all restrictions upon the shipment of Central California navel oranges under Order No. 14, and all obligations imposed in connection therewith, be terminated forthwith, or that said defendant be exempted therefrom, that Order No. 14 be so amended or modified as to prevent a repetition in the future of the situation complained of in said petition, or that Order No. 14 be terminated and cancelled forthwith, and for such other and further relief as might be meet and just in the premises.

III.

That on April 12, 1956, plaintiff filed an action, No. 1637—ND in this Court, against Defendant Lo Bue Brothers, a partnership, and the defendant partners, to enjoin violations of Order No. 14, under Section 608a(5)(6) of the Act, and at the same time obtained a temporary restraining order against said defendants therein. That on April 19, 1956, a consent decree for permanent injunction was made and entered against said defendants in said action, enjoining them from violating Order No. 14 and any

lawful order, rule or regulation issued by the Secretary of Agriculture thereunder.

IV.

That an answer to the petition of Defendant Lo Bue Brothers, a partnership, above referred to, was filed by the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, on May 9, 1956, and an oral hearing was held upon said petition, at Los Angeles, California, on June 14, 1956, at which time and place said petitioning defendant appeared, [18] with counsel, and introduced evidence both oral and documentary in support of said petition, and counsel for the Department of Agriculture introduced evidence both oral and documentary in opposition to said petition. That thereafter briefs were filed on behalf of said petitioning defendant and on behalf of the Department of Agriculture, and on September 28, 1956, the hearing examiner issued a report containing proposed findings of fact and conclusions and recommending that the petition be dismissed, to which report said petitioning defendant filed written exceptions. That on December 3, 1956, the judicial officer of the Department of Agriculture issued his decision and order denying the relief requested by the petitioning defendant and dismissing the said petition.

Wherefore, defendants pray:

1. That the complaint herein be dismissed, and that plaintiff take nothing thereby.

2. That defendants recover their costs herein expended and incurred.

3. That defendants be given such other, further and different relief as may be meet and proper in the premises.

/s/ G. V. WEIKERT,

Attorney for Defendants.

Receipt of copy acknowledged.

[Endorsed]: Filed June 7, 1957. [19]

[Title of District Court and Cause.]

STIPULATION OF FACTS AND ISSUES

Whereas, the United States of America has filed a complaint in the United States District Court, Southern District of California, Northern Division, seeking to recover a statutory forfeiture from the defendants under the provisions of Section 8a(5) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C., Section 608a(5)); and

Whereas defendants have filed their answer and it appears that there are matters of fact that can be agreed upon,

Now, Therefore, It Is Hereby Stipulated by and between the above-named parties, by and through their respective counsel, Laughlin E. Waters, United States Attorney; Richard A. Lavine, [22] Chief of

the Civil Division, and Jordan A. Dreifus, Assistant United States Attorney, attorneys for the plaintiff, and G. V. Weikert, attorney for the defendants, as follows:

1. This is a civil action brought by the United States of America, acting through the United States Attorney for the Southern District of California, at the request of the Secretary of Agriculture.

2. The defendants, Mario Lo Bue, Fred Lo Bue and Joseph Lo Bue, are partners operating as growers, handlers and shippers of navel oranges in Tulare County, California, which is in Central California in the area designated by the Secretary of Agriculture as Prorate District No. 1. At Lindsay, California, within this area they operate an orange packing establishment as a partnership under the trade name Lo Bue Brothers. William Luther Woodall is the sales manager for Lo Bue Brothers and resides in Tulare County, California.

3. Pursuant to Title 7, Section 608c of the United States Code, the Secretary of Agriculture issued Marketing Order No. 14, as amended, regulating the handling of navel oranges in the State of Arizona and a designated part of the State of California. The order became effective on October 22, 1953, and has remained constantly in effect since that date.

4. Four geographical prorate districts were established by the Secretary of Agriculture under

Section 914.66 of Order No. 14 for the purpose of allotting shipments of oranges, as follows:

a. District 1 shall include that portion of the State of California between the 35th Parallel and the 37th [23] Parallel, but shall exclude that portion of Kern County situated south of the Kern River.

b. District 2 shall include that portion of the State of California which is south of the 35th Parallel, but shall exclude Imperial County, California, and that portion of Riverside County, California, situated south and east of White Water, California.

c. District 3 shall include the State of Arizona, Imperial County, California, and that portion of Riverside County, California, situated south and east of White Water, California.

d. District 4 shall include that portion of Kern County, California, situated south of the Kern River.

5. The Secretary of Agriculture fixed the quantity of navel oranges grown in Prorate District 1, which could be handled during the weekly period covered by Navel Orange Regulation No. 81 commencing at 12:01 a.m. on April 1, and ending at 12:01 a.m. on April 8, 1956, at 277,200 cartons as set forth in the Federal Register, 21 F.R. 2037. During the weekly period covered by Navel Orange Regulation No. 82, commencing at 12:01 a.m. on April 8, and ending at 12:01 a.m. on April 15, 1956, the

quantity fixed was 231,000 cartons as set forth in the Federal Register, 21 F.R. 2267.

6. On October 18, 1955, Lo Bue Brothers filed with the Navel Orange Administrative Committee an application for a prorated [24] base and allotment to ship navel oranges produced in Prorate District 1 during the 1955-56 marketing season. Based upon such application the committee determined that during the weekly period covered by Navel Orange Regulation No. 81 (12:01 a.m., April 1, to 12:01 a.m., April 8, 1956) Lo Bue Brothers had available for current shipment 3.7622 per cent of all navel oranges produced in District 1 which were available for shipment during such period. Lo Bue Brothers were allotted 10,428 cartons of the 277,200 cartons fixed by the Secretary of Agriculture as the quantity of navel oranges produced in Prorate District 1 that should be handled during such period.

7. There was paid back to Lo Bue Brothers during the weekly regulation period covered by Navel Orange Regulation No. 81 (12:01 a.m., April 1, to 12:01 a.m., April 8, 1956) allotment totaling 892 cartons which had previously been loaned by Lo Bue. Under the provisions of Sections 914.55 and 914.57 of Order No. 14, Lo Bue was permitted to overship his base allotment of 10,428 cartons by 10%, or 1,043 cartons, thus making a total of 12,363 cartons of navel oranges which was available to Lo Bue for shipment under said allotment during the

weekly regulation period covered by Navel Orange Regulation No. 81.

8. The committee determined that based upon the application filed by Lo Bue for a prorated base and allotment Lo Bue Brothers had available for current shipment during the weekly period covered by Navel Orange Regulation No. 82 (12:01 a.m., April 8, to 12:01 a.m., April 15, 1956), 3.7671 per cent of all navel oranges produced in District 1 available for current shipment during such period. Lo Bue Brothers were allotted 8,702 cartons of the 231,000 cartons fixed by the Secretary as the quantity of navel oranges that should be handled in Pro-rata District 1 during such period.

9. There was paid back to Lo Bue Brothers during weekly regulation period covered by Navel Orange Regulation No. 82 [25] (12:01 a.m., April 8, to 12:01 a.m., April 15, 1956) allotment totaling 36 cartons which had previously been loaned by Lo Bue, making a total of 8,738 cartons of allotment issued or paid back to Lo Bue during this period. Under Sections 914.55 and 914.57 of the order (if said provisions were legally binding on Lo Bue), Lo Bue was required to deduct from the 8,738 cartons the 1,043 cartons of overshipment made during the weekly regulation period covered by Navel Orange Regulation No. 81 and to repay 262 cartons of allotment which they had previously borrowed from other handlers. After making these adjustments there remained available to Lo Bue for shipment under said allotment during the weekly regu-

lation period covered by Navel Orange Regulation No. 82 allotment for 7,433 cartons of navel oranges.

10. During the weekly period covered by Navel Orange Regulation No. 81 (12:01 a.m., April 1, to 12:01 a.m., April 8, 1956) Lo Bue Brothers handled a total of 35,779 cartons of navel oranges produced in District 1, which was 23,416 cartons in excess of the allotment issued to them by the Navel Orange Administrative Committee for such period.

11. During the weekly period covered by Navel Orange Regulation No. 82 (12:01 a.m., April 8, to 12:01 a.m., April 15, 1956) Lo Bue Brothers handled a total of 16,281 cartons of navel oranges produced in District 1 which was 2,933 cartons in excess of the allotment issued to them by the Navel Orange Administrative Committee, prior to April 9, 1956.

12. The 26,349 cartons of navel oranges produced in Prorate District 1 which Lo Bue Brothers handled in excess of their allotment, prior to April 9, 1956, if such allotment was legally binding on them, were ultimately sold to various customers throughout the United States. Lo Bue Brothers ultimately received the gross sum of approximately \$49,870.74 for the sale of such oranges, as appears in Appendix A attached hereto. A complete list of [26] shipments made by Lo Bue Brothers during weekly periods covered by Navel Orange Regulations Nos. 81 and 82, prior to April 9, 1956, which were in excess of Lo Bue's allotment, if such allotment was binding on them, is shown on Appendix A attached.

13. On April 5, 1956, Lo Bue Brothers mailed, by air mail, to the Hearing Clerk, Office of the Secretary, U. S. Department of Agriculture, Washington 25, D. C., a petition for relief from Order No. 14 [and particularly from the obligations imposed upon said defendant in connection therewith], pursuant to the provisions of Section 608c(15)(A) of the Agricultural Marketing Agreement Act of 1937. (7 U.S.C. 608c(15)(A).) This petition alleged that the normal shipping season for Central California navel oranges ends not later than April 1 of each year; that experience has proved that navel oranges from this district held beyond that date deteriorate so rapidly that they have little or no commercial value. Consequently, it has been the uniform practice prior to the navel shipping season of 1956 to terminate all restrictions on shipments from this district not later than March 25 of each year. It further alleged that in the year 1956, the Navel Orange Administrative Committee with the approval of the Secretary of Agriculture, reduced the quantities of Central California navel oranges permitted to be marketed week by week during the shipping season so far below normal that a large quantity of such oranges remained unharvested and unshipped at the end of March, and said Committee indicated that it intended to continue to restrict weekly shipments of such oranges well into the month of May.

The petition further alleged that meanwhile, Central California navel oranges had come into com-

petition with Southern California navel oranges, which generally mature later and have a much longer historical life. Market resistance to Central California fruit had been rapidly developing and by April 2, 1956, there [27] was a differential of from 75c to \$1.00 per carton in favor of Southern California fruit due to its superior quality. Continuing deterioration of the Central California fruit would make it practically worthless after the week commencing April 2. Continuation of the Navel Orange Administrative Committee's policy of prorating shipments would have meant that said defendant would be able to ship only about 33 cars of navel oranges between April 2 and May 6, 1956, and would still have had approximately 40 cars left on that date. All such fruit unshipped after the week of April 2 would be a total loss.

It further alleged that the Navel Orange Administrative Committee had been operating with only one member representing Central California and that while so operating had extended and proposed to extend the marketing period for Central California fruit some 8 weeks beyond its historical life, while extending the marketing period for Southern California fruit less than two weeks past its historical life, thus discriminating in favor of Southern California growers, handlers, and shippers. That the action of the Navel Orange Administrative Committee, approved by the Secretary of Agriculture, in restricting the shipment of Central California navel oranges beyond their historical life

was arbitrary, capricious, unreasonable, inequitable, discriminatory, oppressive, unfair, and unjust, that the declared policy and purpose of the Act was thereby defeated, and that said defendant and its growers were thereby being deprived of their property without due process of law, and their property had been and was thereby being taken, confiscated, and destroyed without compensation therefor, all in violation of the Fifth Amendment to the Constitution of the United States.

The petition prayed that the Secretary of Agriculture grant defendant, Lo Bue Brothers, a hearing and that all restrictions [28] upon the shipment of Central California navel oranges under Order No. 14 and all obligations imposed in connection therewith be terminated forthwith, or that the defendant be exempted therefrom, and that Order No. 14 be so amended or modified as to prevent a repetition in the future of the situation complained of, or that Order No. 14 be terminated and cancelled forthwith.

14. An answer to the petition of the petitioning defendant Lo Bue Brothers was filed by the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture on May 9, 1956, and a hearing was held on the petition on June 14, 1956, at Los Angeles, California, at which time the petitioning defendant Lo Bue Brothers appeared with counsel and introduced evidence both oral and documentary in support of said petition. Counsel for the Department of Agriculture intro-

duced evidence both oral and documentary in opposition to said petition. Thereafter briefs were filed by both parties and on September 28, 1956, the Hearing Examiner issued a report containing proposed findings of fact and conclusions and recommending that the petition be dismissed. The petitioning defendant, Lo Bue Brothers, filed written exceptions to this report and on December 3, 1956, the Judicial Officer of the Department of Agriculture issued his decision and order denying the relief requested, and dismissing the petition. (15 Ag. Dec. 1285.) No appeal to the courts of the United States was taken by the petitioning defendant Lo Bue Brothers from the decision of the Judicial Officer of the Department of Agriculture.

15. On April 12, 1956, plaintiff filed an action No. 1637—ND in this Court against the defendant Lo Bue Brothers, a partnership, and the defendant partners, to enjoin violations of Order No. 14, under 7 U.S.C., Section 608a(5)(6) of the United States Code. A temporary restraining order against the defendants [29] was issued and was followed on April 19, 1956, by a consent decree for permanent injunction enjoining them and all of their agents and persons acting for them from violating Order No. 14 and any lawful order, rule, or regulation issued by the Secretary of Agriculture thereunder.

16. That Appendix B attached hereto is a true photocopy of the envelope in which the petition described in stipulation 13 was mailed.

17. That Christopher C. Robinson, was at all times material a postal clerk employed at the main United States Post Office, Washington, D. C.; that if he was called, sworn, and examined as a witness in this case, he would testify substantially as appears in the statement dated August 28, 1957, a copy of which is attached hereto as Appendix C.

18. That Paul Lewis was, at all times material, a postal clerk employed in the Agricultural Post Office, Washington, D. C.; that if he was called, sworn, and examined as a witness in this case, he would testify substantially as appears in the statement dated August 29, 1957, a copy of which is attached hereto as Appendix D.

19. That Nellie C. Chase was, at all times material, employed as a clerk in the Hearing Clerk's Section of the Office of the Secretary of the U. S. Department of Agriculture; that if she was called, sworn and examined as a witness in this case, she would testify substantially as appears in the statement dated August 29, 1957, a copy of which is attached hereto as Appendix E.

20. That Agnes B. Clarke was, at all times material, the Hearing Clerk in the Office of the Secretary, U. S. Department of Agriculture, Washington, D. C.; that if she was [30] called, sworn, and examined as a witness in this case, she would testify substantially as appears in the statement dated August 29, 1957, a copy of which is attached hereto (including the first page only of said petition), as Appendix F.

21. That William G. Sparkman was at all times material, employed as a Postal Clerk in the Agriculture Post Office; that if he was called, sworn, and examined as a witness in this case, he would testify substantially as appears in Appendix G.

22. That copies of U. S. Post Office Form 3877 entitled "Application for Registration and Certificate of Declared Value [etc.], dated April 7, 1956, U. S. Department of Agriculture P. & O. Form 4, and U. S. Postal Form 1115, and all the entries on them, as attached hereto in Appendix H, are true copies of the documents referred to in Appendices C, D, E, and G, mentioned above.

23. The parties expressly reserve the right to object to any and all of the foregoing stipulated facts on the grounds of irrelevancy or immateriality, and shall be free to argue the legal effect or conclusions that can be drawn from them.

Issues of Law to Be Tried

1. Whether this court has jurisdiction of this suit under 7 U.S.C. 608a(5)-(9).

2. Whether, in this suit, there can be brought into question the validity, legality, or binding effect, as to the defendants, of the following, or all or any of them:

(a) Marketing Order No. 14 of the Secretary of Agriculture, (7 C.F.R. 916.66), mentioned above in the Stipulation of Facts;

(b) Navel Orange Regulations Nos. 81 and 82 mentioned above in the Stipulation of Facts; or

(c) The determinations, and the allotment limitations therein, of the Navel Orange Administrative Committee, mentioned above in Paragraphs 6, 7, 8, and 9 of the Stipulation of Facts.

3. If such may be brought into question in this suit, then in that event, whether the aforesaid Order, Regulations, or determinations, or the allotment limitations therein, or all or any of these, were invalid, illegal or without binding effect upon the defendants.

4. Whether the immunity provided by the proviso of 7 U.S.C. 608c(14) applies to this suit.

5. Whether it is material whether the petition filed by defendant Lo Bue Brothers, as stated in paragraph 13 of the foregoing Stipulation of Facts, under 7 U.S.C. 608c(15), was filed in good faith.

6. Whether it is material whether the petition filed by defendant Lo Bue Brothers, as stated in paragraph 13 of the foregoing Stipulation of Facts, under 7 U.S.C. 608c(15), was filed for the purposes of delay.

7. Whether defendant William Luther Woodall was a party to or privy to the aforementioned petition to the Secretary of Agriculture; and whether he acted jointly with, in combination with, or on behalf of Lo Bue Brothers in the acts and conduct complained of in this case.

8. If the defendants or any of them are liable, in what amount, if any, damages shall be awarded.

Issues of Fact to Be Tried

1. If material, whether or not the petition, filed by Lo Bue Brothers, under 7 U.S.C. 608c(15) was filed in good faith.

2. If material, whether or not the petition, filed by Lo Bue Brothers under 7 U.S.C. 608c(15), was filed for purposes of delay.

3. If material, exactly when the petition, filed by defendant Lo Bue Brothers under 7 U.S.C. 608c(15), was filed.

4. Whether defendant William Luther Woodall was a party to or privy to the aforementioned petition to the Secretary of Agriculture; and whether he acted jointly with, in combination with, or on behalf of Lo Bue Brothers in the acts and conduct complained of in this case.

5. If the defendants or any of them are liable, in what amount, if any, damages shall be awarded.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division.

/s/ JORDAN A. DREIFUS,
Assistant U. S. Attorney,
Attorneys for Plaintiffs.

/s/ G. V. WEIKERT,
Attorney for Defendants.

APPENDIX A

Shipments in Excess of Allotment Made by Lo Bue During
Weekly Period Covered by Navel Orange Regulation No. 81

Date of Shipment	Invoice No.	Consignee and Destination	No. of Cartons	Sales Price F.O.B. Lindsay
4-7-56	840	Safeway Stores, Inc. El Paso, Texas	855	\$1,624.50
4-7-56	839	Great A & P Tea Company North Hawthorne, New Jersey	1,025	1,958.01
4-7-56	841	A. Arena & Company, Ltd. Chicago, Illinois	1,025	1,955.39
4-7-56	842	National Tea Company Chicago, Illinois	1,025	1,931.84
4-7-56	846	National Tea Company Chicago, Illinois	1,025	1,960.07
4-7-56	843	Great A & P Tea Company Onleyville, Rhode Island	1,025	1,964.46
4-7-56	844	Kroger Company Cincinnati, Ohio	1,025	1,967.43
4-7-56	845	A. Arena & Company, Ltd. Roseville, California	1,025	2,011.91
4-7-56	847	Great A & P Tea Company Onleyville, Rhode Island	1,025	1,954.62
4-7-56	863	Safeway Stores, Inc. Spokane, Washington	1,025	1,896.25
4-7-56	860	A. Arena & Company, Ltd. Roseville, California	1,025	1,912.50
4-7-56	854	Great A & P Tea Company Harlem River, New York	1,025	1,953.28
4-7-56	852	Kroger Company Detroit, Michigan	1,025	1,955.32
4-7-56	850	National Tea Company Chicago, Illinois	1,025	2,107.03

Date of Shipment	Invoice No.	Consignee and Destination	No. of Cartons	Sales Price F.O.B. Lindsay
4-7-56	853	Great A & P Tea Company Onleyville, Rhode Island	1,025	\$1,950.59
4-7-56	851	A. Arena & Company, Ltd. Chicago, Illinois	1,025	1,801.57
4-7-56	849	National Tea Company Chicago, Illinois	1,025	1,958.05
4-7-56	856	National Tea Company Chicago, Illinois	1,036	1,981.93
4-7-56	855	National Tea Company Chicago, Illinois	1,025	1,958.05
4-7-56	859	Great A & P Tea Company Onleyville, Rhode Island	1,025	1,952.60
4-7-56	858	Kroger Company Detroit, Michigan	1,025	1,955.32
4-7-56	857	Great A & P Tea Company Mineola Garden City, N.Y.	1,025	1,353.85
4-7-56	848	Great A & P Tea Company Waverly, New Jersey	1,025	1,953.96

Shipments in Excess of Allotment Made by Lo Bue Through
April 8, 1956, During Weekly Period Covered by Navel Orange
Regulation No. 82

4-8-56	876	National Tea Company Chicago, Illinois	883	\$1,686.53
4-8-56	877	A. Arena & Company, Inc. Chicago, Illinois	1,025	1,954.10
4-8-56	878	A. Arena & Company, Inc. Chicago, Illinois	1,025	2,211.58

AIR MAIL - REGISTERED
RETURN RECEIPT
REQUESTED

REGISTERED

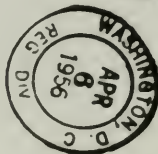
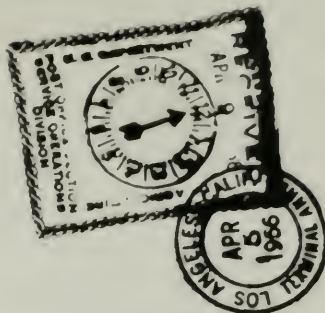
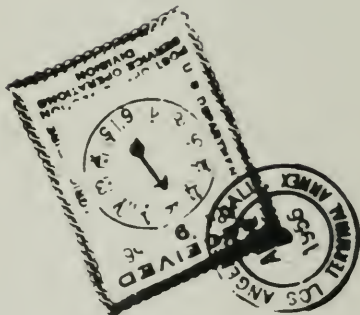
97021 27-21

RETURN RECEIPT REQUESTED

Hearing Clerk,
Office of the Secretary,
U. S. Department of Agriculture,
Washington 25, D. C.

AIR MAIL

APPENDIX " B "



Appendix C

Washington, D. C.

August 28, 1957

I, Christopher C. Robinson, Postal Clerk, United States Post Office, Washington, D. C., make the following statement, freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Dept. of Agriculture.

I am 38 years old, reside at 639 Montello Ave., N.E., Washington, D. C. and have been employed with the United States Post Office Department for approximately ten (10) years.

The United States Post Office records reveal that on April 7, 1956, I prepared a United States Postal Form 3877 containing forty (40) pieces of registered mail which I listed on the form. My signature along with the time I completed the form appears on the bottom of the second of two (2) 3877 forms. At the time Agent Reis-El Bara showed me the photostat of the 3877 form I stated there must be another form with that one because it did not contain the lock and rotary number which is mandatory, nor did it contain my signature, the total pieces or the time of completion of the form. The Post Office records will reveal there were in fact two (2) sheets with the one mail bag of Registered Mail, the second a continuation of the first.

The afternoon mail for the Agriculture Dept.

leaves the United States Post Office at approximately 2:30 to 3:00 p.m. daily except Saturday and Sunday when there is no delivery. Mail arriving at the U. S. Post Office for the Agriculture Dept. after approximately 2:00 p.m. on Friday is held over until the first delivery on Monday morning.

The photostat of the registered envelope, Reg. #97021, bearing the Washington, D. C., date stamp of 6 April 1956, therefore would have to have arrived sometime Friday after the afternoon mail had left for delivery to the Dept. of Agriculture. The mail is put in the various bins here in the post office for delivery to the addressees and over the weekend is prepared for delivery on Monday. Registered Mail is prepared first so it will go out on the first delivery on Monday. I wrote up the 3877 form containing registered letter #97021 on Saturday evening completing the form at 10:45 p. m. as indicated by my signature and the time of completion. I then placed the mail and the form 3877 in the mail bag and locked it with lock number 48532, rotary number 203. This mail then remained in the United States Post Office until it was delivered to the Department of Agriculture on Monday morning.

I have read the above statement consisting of two (2) typewritten pages, have had the opportunity to make any additions or corrections and the entire statement is true and correct to the best of my knowledge.

/s/ CHRISTOPHER C.
ROBINSON.

Witness:

/s/ HENRY P. REIS-EL BARA,
Special Agent, Internal Audit Division, Agricultural
Marketing Service, U. S. Department of
Agriculture, Washington 25, D. C.

Appendix D

Washington, D. C.

August 29, 1957

I, Paul Lewis, Postal Clerk, Agriculture Post Office, make the following statement, freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

The large volume of mail handled each day makes it impossible for me to remember any one particular letter but from the photostats shown me, by Special Agent Reis-El Bara, of U. S. Post Office Form 3877 dated April 7, 1956, and U. S. Department of Agriculture P&O Form 4 dated April 9, 1956, at 11:51 a.m. I can state positively I processed the mail bag containing registered letter #97021 addressed to the Hearing Clerk on April 9, 1956. My initials appear on the U. S. Post Office Form 3877 on the right hand side of the form where the date and the time are stamped and on the left hand side of the Mail Receipt P&O Form 4 where the date

and time are stamped. This means I opened the mail bag containing that batch of registered letters and checked the contents against the form. The photostat of the U. S. Post Office Form 3877 dated April 7, 1956, would appear to be page one of two or more pages because it does not contain the lock and rotary number which must be on each form to identify the bag with its contents.

When I open a bag of registered mail I check the U. S. Post Office Form 3877 against the mail and when all is in order I time and date stamp the form at that time. The mail is then sorted out for filing and date and time stamped before being placed in the proper Out Box for delivery. Registered letter #97021 bears the U. S. Agriculture Received Stamped dated April 9, 1956, at approximately 12:00 Noon. This means I stamped that letter and placed it in the Out Box at that time. This particular stamp is a hand stamp and not an automatic time clock stamp and is used on thick or bulky pieces of mail which will not fit in the automatic time clock stamp or when I have the mail laid out on the table and want to rapidly stamp the incoming mail.

After all the mail has been sorted and placed in the proper Out Boxes the Mail Receipt for each box is made out. The photostat of Mail Receipt P&O Form 4 dated April 9, 1956, 11:51 a.m. indicates that was the thirty-fourth (34) such form made out that day as shown by the number 34 in the

uper right hand corner. My initials on that form indicate I listed six (6) pieces of mail—2 Reg. and 4 Certified registered for the Secretary of Records Office of which one was registered letter #97021 for the Hearing Clerk. After completing the form I time and date stamped it and placed it in the Out Box with the Mail.

I have read the above statement consisting of this and two other typewritten pages, have had the opportunity to make any additions or corrections and the statement is true and correct to the best of my knowledge.

/s/ PAUL LEWIS.

Witness:

HENRY P. REIS-EL BARA,

Special Agent, Internal Audit Division, Agriculture
Marketing Service, U. S. Department of Agri-
culture, Washington, D. C.

Appendix E

Washington, D. C.

August 29, 1957

I, Nellie C. Chase, Clerk, Hearing Clerks' Section of the Office of the Secretary, U. S. Department of Agriculture, make the following statement, freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the

Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

Our files reflect a letter from G. V. Weikert and a petition from Lo Bue Bros., Lindsay, California, was received on April 9, 1956. Photostats of a Mail Receipt shown to me by the Agent reflect my initials after Miss Clarke's signature indicating that on April 9, 1956, at approximately 1:20 p.m., I signed for a registered letter delivered to this section by the Secretary's Records Office.

The registered envelope bearing registry number 97021 has Return Receipt Requested, stamped on it. When registered letters have this stamped on them, either I or Miss Clarke sign the receipt and return it to the sender. We receive so many registered letters without seeing the receipt it would be impossible to determine which one of us signed the return receipt.

After I receive the mail in the usual course of business, it is then placed on Miss Clarke's desk where it is stamped with a date time stamp. The petition from Lo Bue Bros., along with the letter from G. V. Weikert, were stamped by Miss Clarke on April 9, 1956, at approximately 2:00 p.m. according to the stamp in the upper right hand corner.

I have read the above statement consisting of this and one other typewritten page, have been given the opportunity to make any additions or correc-

tions and the statement is true and correct to the best of my knowledge.

/s/ NELLIE C. CHASE.

Witness:

/s/ HENRY P. REIS-EL BARA

Special Agent, Internal Audit Division, Agriculture
Marketing Service, U. S. Department of Agriculture,
Washington, D. C.

Appendix F

Washington, D. C.

August 29, 1957

I, Agnes B. Clarke, Hearing Clerk, Office of the Secretary, U. S. Department of Agriculture, make the following statement, freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agriculture Marketing Service, U. S. Department of Agriculture.

My files reflect the Hearing Clerk's Office received a registered letter from G. V. Weikert along with a petition from Lo Bue, Lindsay, California, on April 9, 1956. The date time stamp in the upper right-hand corner indicates it reached my desk at approximately 2:00 p.m. on April 9, 1956. When petitions are filed with the Hearing Clerk they are always dated upon receipt. The large volume of mail

received by this section makes it impossible to recall a particular letter or petition so each is stamped as it is received.

We only sign for registered mail. In the case of registered mail return receipt requested, either Mrs. Chase or I sign for the return receipt at the time of delivery. Again the large volume of mail makes it impossible to recall which one of us has signed for a particular letter without having the receipt to check the signature. The photostat the Agent has shown me of the United States Department of Agriculture, Mail Receipt covering registered letter No. 97021 was signed by Mrs. Chase for me as shown by her initials after my name.

I have read the above statement consisting of this and one other typewritten page, have been given the opportunity to make any additions or corrections and the statement is true and correct to the best of my knowledge.

/s/ AGNES B. CLARKE.

Witness:

/s/ HENRY P. REIS-EL BARA,
Special Agent, Internal Audit Division, Agriculture
Marketing Service, U. S. Department of Agriculture,
Washington, D. C.

United States Department of Agriculture
Before the Secretary of Agriculture
AMA Docket No. 14-1

In the Matter of the Petition of:

LO BUE BROS., a Co-partnership,
Petitioner.

To the Honorable the Secretary of Agriculture of
the United States:

The above-named petitioner, pursuant to the provisions of Subsection (15)(A) of Section 8c of the Agricultural Adjustment Act of 1933, as amended, and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 608c (15)(A)), hereinafter called "the Act," respectfully represents:

I.

Petitioner, Lo Bue Bros., is a co-partnership composed of Mario Lo Bue, Joseph Lo Bue, and Fred Lo Bue with its principal office and place of business located at 201 Sweetbriar, Lindsay, California.

II.

Petitioner complains of the "Order Regulating the Handling of Navel Oranges Grown in the State of Arizona and a Designated Part of California," designated "Order No. 14," issued by the Secretary of Agriculture August 5, 1953, effective September 22, 1953, and particularly of the obligations imposed upon petitioner in connection therewith, and alleges that each

Appendix G

William G. Sparkman if called, sworn, and examined as a witness in this case would testify:

He is and was on April 9, 1956, a postal clerk in the Agriculture Post Office, U. S. Department of Agriculture, Washington, D. C. He was at that time authorized to sign for and receive registered mail for that Post Office. He has no independent recollection of the specific bag of mail involved in this case, but recognizes his signature on U. S. Postal Form WPO 1115, copy of which is attached hereto in Appendix H, dated April 9, 1956. The entries on the form mean that he received, and signed for, ten (10) bags of registered mail at 7:45 a.m. on that date, and one of those bags was one with lock number 48532-203. [41]

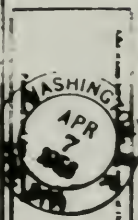
APPLICATION FOR REGISTRATION AND CERTIFICATE OF DECLARED VALUE OF MATTER SUBJECT TO POSTAL SURCHARGE

Agriculture

Handwritten signature

Notice to Applicant: This form is to be filled out by the registered mail.

Special application for registration of the articles described below



NAME	PAID	POSTAGE	REGISTERED MAIL	DECLARED VALUE	REMARKS
880					
3008					Indin
3069					SFC UAH
31728					Ecume
557768					Ecume
875					Ecume
87562					Ecume
026327					Ecume
703775					Ecume
15545					Ecume
398358					Ecume
87021					Ecume
119061					Ecume
5904					Ecume
AIR					Ecume

of pieces listed by number and number of pieces received at post office

NAME	PAID	POSTAGE	REGISTERED MAIL	DECLARED VALUE	REMARKS
1907					Ecume
82606					Ecume
- 567					Ecume
5404					Ecume
1818					Ecume
830197					Ecume
82046					Ecume
719912					Ecume
2974					Ecume
5937					Ecume
R-2625					Ecume
1904					Ecume
925					Ecume
925					Ecume

APPENDIX

These are "Registered" articles. They are subject to special postage paid at either three cents or 10 cents, whichever is less. Also see the schedule in Schedule "A" of "Regulation" No. 11, "United States Post Office," 1917, "A-11."

Surcharges are not required on international registered mail.

(一) 二、三、四

(Address)

A circular stamp with the text "APR 7 1956" inside. The stamp is slightly tilted and has a dark, irregular border.

APPENDIX

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三

Also, use the terms to indicate $V = 1$: "fragile", "MD", "if", "special", "small", "Axiom", and "C. U. D." and amount the same if registered C. U. D. small.

REGISTERED MATTER DELIVERED BY
OFFICIAL MAIL MESSENGER SERVICE

No. 7

Post No.	Look and Receipt or Address No.	Destination or Agent	Signature of Assigned Agent
V	69208-243	Apic.	
L	49089-158		
N	6960-129		
V	79000-91		
L	22402-538		
L	48532-203		
M	9243-444		
A	59012-647		
V	38254-42		
L	30271-281		
A	7368-144		
A	58397-516		
A	85485-409		
A	20482-503		
V	86416-223		
A	1303-22		
	274	Front Rd. Ill.	
	275		
A	1530-148		
V	2487-440		
	37		
	551/2		

Delivered 22

[Endorsed]: Filed October 11, 1957.

APP 1011

H

[Title of District Court and Cause.]

SUPPLEMENTAL STIPULATION OF FACTS;
AND ADDITIONAL ISSUE

Whereas, the United States of America has filed a complaint in the United States District Court, Southern District of California, Northern Division, seeking to recover a statutory forfeiture from the defendants under the provisions of Section 8a(5) of the Agricultural Marketing Agreement Act of 1937; (7 U.S.C. § 608a(5)) and

Whereas, plaintiff and defendants have heretofore entered into and filed a stipulation of facts and issues in this case; and

Whereas, defendants have filed their answer and it appears [44] that there are additional matters of fact that can be agreed upon,

Now, Therefore, It Is Hereby Stipulated by and between the above-named parties, by and through their respective counsel, Laughlin E. Waters, United States Attorney, Richard A. Lavine, Chief of the Civil Division, and Jordan A. Dreifus, Assistant United States Attorney, attorneys for the plaintiff, and G. V. Weikert, attorney for the defendants, as follows:

1. That Neal O'Donnell was at all times material, employed as a Postal Clerk, United States Post Office, Washington, D. C.; that if he were called, sworn, and examined as a witness in this

case he would testify substantially as appears in the statement dated October 7, 1957, a copy of which is attached hereto as Appendix 1.

2. That Christopher C. Robinson was at all times material, employed as a Postal Clerk, United States Post Office, Washington, D. C.; that if he were called, sworn, and examined as a witness in this case he would testify substantially as appears in a statement dated October 7, 1957, a copy of which is attached hereto as Appendix 2.

3. That William H. Tatum, Sr., was at all times material, employed as a mail carrier, United States Post Office, Washington, D. C.; that if he were called, sworn, and examined as a witness in this case he would testify substantially as appears in a statement dated October 8, 1957, a copy of which is attached hereto as Appendix 3.

4. That Paul Lewis was at all times material, employed [45] as a Postal Clerk, Agricultural Post Office, Washington, D. C.; that if he were called, sworn, and examined as a witness in this case he would testify substantially as appears in a statement dated October 7, 1957, a copy of which is attached hereto as Appendix 4.

5. That William G. Sparkman was at all times material, employed as a Postal Clerk, Agricultural Post Office, Washington, D. C.; that if he were called, sworn, and examined as a witness in this case he would testify substantially as appears in a

statement dated October 10, 1957, a copy of which is attached hereto as Appendix 5.

6. That Nellie C. Chase, was at all times material, employed as a Clerk, Office of the Hearing Clerk, Department of Agriculture, Washington, D. C.; that if she were called, sworn, and examined as a witness in this case she would testify substantially as appears in a statement dated October 7, 1957, a copy of which is attached hereto as Appendix 6.

7. That Agnes B. Clarke, was at all times material, employed as Hearing Clerk, Office of the Hearing Clerk, Department of Agriculture, Washington, D. C.; that if she were called, sworn, and examined as a witness in this case she would testify substantially as appears in a statement dated October 7, 1957, a copy of which is attached hereto as Appendix 7.

8. That the record of the administrative proceeding on the petition filed by Lo Bue Brothers under 608c(15)(A) which [46] is on file with the Hearing Clerk, United States Department of Agriculture, including the transcript of the testimony offered at such hearing, is the official record of such proceeding and is in all respects authentic.

9. The parties expressly reserve the right to object to any and all of the foregoing stipulated facts on the grounds of irrelevancy or immateriality, and shall be free to argue the legal effect or conclusions that can be drawn from them.

Additional Issue of Law and Fact

Whether the defendants, or any of them, violated Order No. 14, or exceeded any purported allotments or quotas thereunder, wilfully or at all.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division;

JORDAN A. DREIFUS,
Assistant U. S. Attorney;

JOHN S. GRIFFIN,
Attorney, Office of the General Counsel, of Counsel,
U. S. Department of Agriculture;

By /s/ JORDAN A. DREIFUS,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

/s/ G. V. WEIKERT,
Attorney for Defendants. [47]

Appendix No. 1

Washington, D.C.,
October 7, 1957

I, Neal D. O'Donnell, Postal Clerk, United States Post Office, Massachusetts Ave. and 1st Street, N.W., Washington, D.C., make the following statement,

freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

I checked the United States Postal Records and made them available to Agent Reis-El Bara. The records reflect as I informed the Agent the registered letter bearing registered number 97021 was delivered to the Agriculture Post Office, U. S. Department of Agriculture at 7:45 a.m., April 9, 1956, along with 39 other pieces of registered matter. Registered letter 97021 was in a bag containing lock number 48532, rotary number 203 at the time it was delivered to the Agriculture Post Office. If I were to appear as a witness, my oral statement would contain in substance the same information I related to Agent Reis-El Bara in my conversation with him on August 28, 1957.

/s/ NEAL D. O'DONNELL.

Witness:

/s/ HENRY P. REIS-EL BARA,
Special Agent, Internal Audit Div., Agricultural
Marketing Ser., U. S. Department of Agriculture,
Washington, D. C. [48]

Appendix No. 2

Washington, D.C.,
October 7, 1957

I, Christopher C. Robinson, Postal Clerk, United States Post Office, Washington, D. C., make the following statement, freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

On April 7, 1956, the day in which the United States Post Office Records revealed I processed registered letter number 97021, I was performing my assigned duties in the registered matter section of the United States Post Office which is located at Massachusetts Ave. and 1st Street, N.E., Washington, D. C. If I were called to testify, my oral statement would be in substance as that which was given to Special Agent Reis-El Bara in a written statement on August 28, 1957.

/s/ CHRISTOPHER C. ROBINSON.

Witness:

/s/ HENRY P. REIS-EL BARA,
Special Agent, Internal Audit Div., Agricultural
Marketing Ser., U. S. Department of Agriculture,
Washington, D. C. [49]

Appendix No. 3

Anacostia, Washington 20, D.C.,
October 8, 1957.

I, William H. Tatum, Sr., Mail Carrier, United States Post Office, 1217 Good Hope Road, South East, Anacostia, Washington 20, D. C., make the following statement, freely and voluntarily, to Henry P. Reis-El Bara who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

The photostat of the United States Post Office form WPO 1115 dated April 9th, 1956, shown me by Agent Reis-El Bara indicates that on that date I delivered ten (10) bags of Registered Matter to the Department of Agriculture Post Office at 7:45 a.m.

At that time I was assigned to the Official Mail Section, Main Post Office, Massachusetts Ave., North Capitol and 1st Street, N.E. In this capacity I drove a mail truck from [50] the post office to various Governmental Agencies in the Washington Area.

I have no idea as to the contents of the locked mail bags. They were delivered to the Agriculture Post Office where William Sparkman signed for the 10 bags of Registered Matter. This is the only contact I had with the mail bags—to deliver them to the Agriculture Post Office.

If I were called to testify, my oral statement in

substance would be the same as given to Agent Reis-El Bara the 8th day of October, 1957.

I have read the above statement consisting of three handwritten pages, been given the opportunity [51] to make any corrections or changes and the statement is true to the best of my knowledge.

/s/ WILLIAM H. TATUM, SR.

Witness:

/s/ HENRY P. REIS-EL BARA,
Special Agent, Internal Audit Div., Agricultural
Marketing Ser., U. S. Department of Agriculture,
Washington, D. C. [52]

Appendix No. 4

Washington, D.C.,
October 7, 1957.

I, Paul Lewis, Postal Clerk, Agriculture Post Office, make the following statement, freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

On April 9, 1956, the day in which the Agriculture Post Office Records revealed I processed a registered bag of mail which contained registered letter number 97021 I was performing my assigned duties in the Agriculture Post Office which is located in room

0409, South Building, Department of Agriculture, Independence Ave. and 12th Street, S.W., Washington, D. C. If I were called to testify, my oral statement would be in substance as that which was given to Special Agent Reis-El Bara in a written statement on August 29, 1957.

/s/ PAUL LEWIS.

Witness:

/s/ HENRY P. REIS-EL BARA,
Special Agent, Internal Audit Div., Agricultural
Marketing Ser., U. S. Department of Agriculture,
Washington, D. C. [53]

Appendix No. 5

Washington, D.C.,
October 10, 1957.

I, William G. Sparkman, Postal Clerk, Agriculture Post Office, Room 0409, South Building, U. S. Department of Agriculture, Independence Ave., between 12 and 14th Streets, S.W., Washington, D. C., make the following statement freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

The Agriculture Post Office records revealed that on Monday, April 9, 1956, at 7:45 a.m. I signed a United States Post Office Form WPO 1115 for ten

(10) bags of registered mail when it was delivered to the Agriculture Post Office from the United States Post Office. At the time I receipted for the ten (10) bags I was on duty in the Agriculture Post Office, Room 0409, located in the basement of the South Building, U. S. Department of Agriculture, Independence Ave., between 12th and 14th Streets S.W., Washington, D. C. The U. S. Postal Form WPO 1115 which accompanied the ten (10) bags of registered mail at the time of delivery reflects a bag with lock number 48532-203 was delivered at this time. I have no idea as to its contents as I merely signed for the bags and placed them in the mail security cage until they could be processed for delivery. This information I related to Agent Reis-El Bara in my conversation with him on August 29, 1957. If I were called to testify my oral statement would be in substance be as related to the agent on August 29, 1957.

/s/ WILLIAM G. SPARKMAN.

Witness:

/s/ HENRY P. REIS-EL BARA,
Special Agent, Internal Audit Div., Agricultural
Marketing Ser., U. S. Department of Agriculture,
Washington, D. C. [54]

Appendix No. 6

Washington, D.C.,
October 7, 1957.

I, Nellie C. Chase, Clerk, Mailing Clerk's Section of the office of the Secretary, U. S. Department of Agriculture, make the following statement, freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

Our files reflect a letter from G. V. Weikert and a petition from Lo Bue Bros., Lindsay, California was received in this section at approximately 1:20 p.m. on April 9, 1956. On that date I was performing my assigned duties in room 112, Administrative Building, U. S. Department of Agriculture, Independence Ave. between 12th and 14th Streets, S.W., Washington, D. C. If I were called to testify my oral statement would be in substance as that which was given to Special Agent Reis-El Bara in a written statement on August 29, 1957.

/s/ NELLIE C. CHASE.

Witness:

/s/ HENRY P. REIS-EL BARA,

Special Agent, Internal Audit Div., Agricultural
Marketing Ser., U. S. Department of Agriculture,
Washington, D. C. [55]

Appendix No. 7

Washington, D.C.,
October 7, 1957.

I, Agnes B. Clarke, Hearing Clerk, Office of the Secretary, U. S. Department of Agriculture, make the following statement, freely and voluntarily, to Henry P. Reis-El Bara, who has identified himself to me as a Special Agent of the Internal Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

My files reflect that at approximately 2:00 p.m., April 9, 1956, a petition from Lo Bue Bros, Lindsay, California, along with a letter from G. V. Weikert reached my desk which is located in Room 112, Administrative Building, U. S. Department of Agriculture, Independence Ave., between 12th and 14th Streets, S.W., Washington, D.C. On that date I was performing my assigned duties as Hearing Clerk and processed the petition from Lo Bue Bros. in the same manner as any other petition. If I were called to testify, my oral statement would be in substance as that which was given to Special Agent Reis-El Bara in a written statement on August 29, 1957.

/s/ AGNES B. CLARKE.

Witness:

/s/ HENRY P. REIS-EL BARA,
Special Agent, Internal Audit Div., Agricultural
Marketing Ser., U. S. Department of Agriculture,
Washington, D. C.

[Endorsed]: Filed October 30, 1957. [56]

[Title of District Court and Cause.]

MEMORANDUM DECISION

The above-entitled cause came on for trial before the Court sitting without a jury, on March 11, 1958. The plaintiff was represented by Laughlin E. Waters, United States Attorney, Jordon A. Dreifus, Assistant United States Attorney, appearing, and John S. Griffin, Attorney for the U. S. Department of Agriculture, of counsel. The defendants were represented by G. V. Weikert, Esq.

Pretrial procedures resulted in the filing of stipulations of fact in which the parties reached agreement on most of the material facts. The evidence consisted of the stipulations of fact, and oral and documentary evidence.

It was stipulated that on April 5, 1956, Lo Bue Brothers mailed by registered air mail from Los Angeles, California, to the Hearing Clerk, Office of the Secretary, [166] Department of Agriculture, Washington, D. C., a petition for relief from Order No. 14 (and particularly from the obligations imposed upon the defendants in connection therewith) pursuant to the provisions of Section 608(c)(15)(a) of the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. 608(c)(15)(a).

The petition arrived in the Washington, D. C. Post Office about 2:00 p.m. on April 6, 1956.

The hearing on the petition was subsequently held and on December 3, 1956, a decision on the merits,

adverse to the petitioner, was made. Although requested to do so, the Judicial Officer of the Department of Agriculture refused to make any finding on whether or not the petition was filed and prosecuted in good faith and not for purposes of delay.

It was further stipulated that subsequent to April 6, 1956, and prior to April 9, 1956, Lo Bue Brothers handled 26,349 cartons of navel oranges in excess of their allotment, if such allotment were legally binding upon them, and that Lo Bue Brothers ultimately received the gross sum of approximately \$49,870.74 from the sale of such excess.

The plaintiff seeks to recover a forfeiture from the defendants pursuant to Section 608(a)(5) of the Agricultural Marketing Agreement Act of 1937. This section provides that any person wilfully exceeding any quota or allotment fixed for him, shall forfeit to the United States a sum equal to three times the current market value of such excess, and the forfeiture shall be recovered in a civil suit brought in the name of the United States.

The defendants contend that under the evidence in this case, the acts of the defendants in exceeding the quota or allotment made to them, were not wilful and further that they are entitled to the immunity provided by Section 608(c) [167] (14) of the Agricultural Marketing Agreement Act of 1937. This section reads as follows:

Any handler subject to an order issued under this section, or any officer, director, agent or

employee of such handler, who violates any provision of such order (other than a provision calling for payment of a pro rata share of expenses) shall, on conviction, be fined not less than \$50 or more than \$500 for each such violation, and each day during which such violation continues shall be deemed a separate violation: Provided, that if the court finds that a petition pursuant to subsection 15 of this section was filed and prosecuted by the defendant in good faith and not for delay, no penalty shall be imposed under this subsection for such violations as occurred between the date upon which the defendant's petition was filed with the Secretary, and the date upon which notice of the Secretary's ruling thereon was given to the defendant in accordance with regulations prescribed pursuant to subsection (15) of this section.

I am satisfied under the law and the evidence that the petition for relief filed by Lo Bue Brothers pursuant to the provisions of Section 608(c)(15)(a) was not filed in the office of the Secretary of Agriculture, Washington, D. C., until in the afternoon of April 9, 1956.

Counsel has called to my attention three decisions which have construed the proviso in Section 608(c)(14). These cases are U. S. vs. William S. Wright, No. 3036-H-Civil; U. S. vs. Alexander Chaskin, No. 3065 O.C.-Civil; and U. S. vs. A. Levy & J. Zentner Co., No. 3081-H-Civil.

All of these cases are from the Southern District of California, and all were decided by the Honorable Harry A. Hollzer, now deceased. In all of these cases, the government sought to recover civil penalties and forfeitures under Section 608(a)(5) for orange shipments in excess of allotments during the pendency of petitions filed under Section 608(c)(15)(a). In all three cases the Court held that the immunity [168] provided by the proviso of Section 608(c)(14) extended to civil penalties as well as criminal penalties. No appeal was taken by the United States from any of those decisions. In the Wright case, the following conclusions of law were adopted by the Court:

“That the provisions of the statute under which these actions are being prosecuted are penal in character and therefore must be construed strictly.

“Since a petition pursuant to Subsection 15, Section 608(c) Title 7 U.S.C. was filed and prosecuted by defendant, William S. Wright, in good faith and not for delay, no penalty can be imposed and no forfeitures can be recovered against said defendant William S. Wright for any of the violations involved herein.”

Similar conclusions of law were filed in the Chaskin case. In the Levy case, the following conclusions of law were adopted:

“The defendant Vincent J. Squillante, having failed to file a petition pursuant to said subsec-

tion (15) of Sec. 608(c) Title 7 U.S.C. and having aided and abetted in the commission of the violation described herein, is liable on account thereof. Said statute is penal in its nature and must be strictly construed.

“The plaintiff is entitled to recover against the defendant Vincent J. Squillante, the statutory forfeitures provided in Sec. 608(a) Title 7, U.S.C. subsection 5.”

In view of the conclusion I have reached, it is unnecessary for me to pass upon the soundness of Judge Hollzer's decisions.

The question remaining is whether or not Lo Bue Brothers wilfully exceeded the quota or allotment fixed for them. In order to resolve this question, some background is necessary. [169]

Counsel for the defendants, Lo Bue Brothers, in the instant case, G. V. Weikert, represented the defendants in each of the cases decided by Judge Hollzer, referred to above. Mr. Weikert testified that he had been practicing law in Los Angeles continuously since 1926; that during the last twenty years his work, to a very considerable extent, had been with the activities of the Department of Agriculture, and that he had specialized in agricultural marketing and the fruit and produce business and its problems generally.

He further testified that over the years he had prepared and filed quite a number of “15-A” petitions for various shippers, and that it had been his

experience that petitions mailed in Los Angeles were delivered in Washington the following day, and that he had proceeded on the assumption that such petitions were received and filed the day after they were mailed. The "15-A" petition filed for Lo Bue Brothers was the first occasion in which the government had ever raised any question as to the date of filing. He further stated that sometime in March, 1956, he had been consulted by the sales manager of the defendants, William Woodall, and that Mr. Woodall said that the normal shipping season for navel oranges in Central California ends about April 1st, and that the Navel Orange Administrative Committee was proposing to restrict shipments for about ten weeks beyond that date. Fruit was deteriorating and dropping and would become worthless unless the restrictions could be removed. Mr. Woodall felt that the restriction was discriminatory against Central California growers because the Committee was proposing to restrict shipments of Southern California oranges no more than two weeks beyond their historical life.

Mr. Weikert then suggested the filing of a petition under Section 15(a) of Section 608 of Title 7 U.S.C. and he [170] advised Mr. Woodall that when the petition was filed in good faith, the restriction on shipments would be suspended until there was a decision on the petition, and that during that period the petitioner was exempt from penalties prescribed by the Act, until he might be subsequently enjoined from further shipments.

Mr. Weikert further testified that he told Mr. Woodall that in the only cases he knew about, which were cases decided in this court in 1944, (the Wright and Chaskin cases above noted) the immunity provided by the statute had been construed to extend to civil penalties as well as criminal penalties, and that once a 15(a) petition was filed in good faith, the petitioner was free to disregard allotments unless and until he was enjoined from further shipments.

Mr. Woodall returned to Lindsay to discuss the advisability of filing such petition with Lo Bue Brothers, and some days later, Mr. Woodall and Mr. Mario Lo Bue, one of the partners of the defendant partnership, by the use of extension telephones, called Mr. Weikert and it was agreed by the three parties to the conversation that a petition pursuant to the provisions of Subsection 15(a) of Section 608, Title 7, U.S.C. should be prepared and filed. Mr. Weikert then prepared the petition and Mr. Lo Bue went to Los Angeles and signed it, and immediately thereafter he returned to Lindsay, leaving the petition with Mr. Weikert, who mailed it on April 5, 1956, by registered air mail to the Department of Agriculture in Washington. On April 6, 1956, late in the afternoon, Mr. Weikert telephoned Mr. Lo Bue, and with Mr. Woodall on the extension telephone, he told them that "by now the petition would be on file with the Secretary of Agriculture, and if they had fruit to ship in excess of their allotment, they could begin the next day to make such shipments and could continue unless and until [171] they

received an injunction or restraining order stopping them.”

The testimony of Mario Lo Bue and William Woodall was substantially the same as the testimony of Mr. Weikert.

Mr. Wilford S. Beard, Special Agent, Agricultural Marketing Service, was called by the plaintiff, and he testified that he had talked to Mr. Mario Lo Bue, one of the defendants, on April 10, 1956, and that Mr. Lo Bue told him that he had engaged an attorney, Mr. Weikert, and that a petition had been signed, and that Mr. Weikert had advised him that after Saturday, April 7, 1956, the defendants would be free to ship oranges in excess of their allotment until restrained by order of the Court. He testified that Mr. Lo Bue told him they were advised not to ship before the petition was filed, but they were free to ship on Saturday, April 7, 1956.

On April 12, 1956, Mr. Beard again called at the office of Lo Bue Brothers, and talked with Mr. Mario Lo Bue again. On that date, Mr. Lo Bue repeated the advice he had received from Mr. Weikert, and said that he had signed the petition on behalf of the partnership. Mr. Beard served Mr. Lo Bue with a restraining order on that date.

Counsel for the plaintiff state that the three cases above noted, decided by Judge Hollzer, are the only cases which have construed the proviso contained in Section 608(c)(14). My research has failed to dis-

close any other decisions on the subject rendered by any United States court.

In *Nicastro vs. United States*, 206 Fed. 2d 89 (Tenth Circuit 1953) the court said, in connection with a violation of the Price Control Act, "The word 'wilful' as used in the statute means voluntary, knowing, and intentional, as distinguished from accidental, involuntary or unintentional. [172] It does not mean with an evil purpose or criminal intent. Practicable precaution against the occurrence of the violation * * * means the exercise of ordinary care and caution to avoid the commission of the wrong." In that case, the Court found the defendants liable because "they did not seek legal advice nor official interpretation" of the statute, and "clearly, their acts were wilful and they failed to take any practicable precautions against an occurrence of their violation."

In *United States vs. Illinois Central Railroad Co.* 303 U. S. 239, the Supreme Court in an action to recover a penalty for wilful failure to unload, feed and water cattle in transit, said: "(the word wilfully) often denotes that which is 'intentional, or knowing or voluntary, as distinguished from accidental' and that it is employed to characterize 'conduct marked by careless disregard whether or not one has the right to so act' * * *"

It is my view that the acts of the defendants cannot be characterized as "wilful." They consulted a reputable attorney who had had extensive experience under laws administered by the Department of Agri-

culture. His advice was based upon the only Court decisions which had been rendered construing the proviso in Section 608(c)(14) of Title 7 U.S.C. His advice was in accordance with such decisions. Before shipments were made by the defendants in excess of their quota, the attorney telephoned them that the "15-A" petition had been filed, and that they could ship under the immunity provided by that same section. The defendants, in my opinion, in good faith, relied upon the advice and information furnished them by their attorney. The defendants, therefore, are entitled to have judgment entered in their favor. [173]

Counsel for the defendants is directed to prepare and lodge, in accordance with the rules of this Court, findings of fact, conclusions of law and form of judgment not inconsistent with the views herein expressed.

The Clerk of this Court is directed to forthwith mail copies of this memorandum to all counsel.

Dated: May 21, 1958.

/s/ GILBERT H. JERTBERG,
Judge, United States District
Court.

[Endorsed]: Filed May 21, 1958. [174]

[Title of District Court and Cause.]

MOTION FOR RECONSIDERATION
AND CLARIFICATION OF DECISION

Plaintiff has been served with defendants' Proposed Findings of Fact, Conclusions of Law and Judgment in accordance with local Rule 7. Those Findings, Conclusions and Judgment are returned for filing at the same time as this motion is filed.

One matter which has appeared both in the Court's Memorandum Decision and in the Findings of Fact, necessitates the plaintiff making this motion addressed to the substance of the decision in the case rather than merely to the form of Findings. Therefore this motion is made for reconsideration of the decision or in the alternative it is made to be treated as a motion to modify the Findings of Fact, Conclusions of Law and Judgment under Rule 59 Federal Rules of Civil Procedure as a motion after judgment. [193]

The point in need of reconsideration and/or clarification arises from the Court's Memorandum filed May 21, 1958 at Page 8, line 28, which reads:

"the defendants in my opinion in good faith relied upon the advice and information furnished them by their attorney."

However, on Page 4 of the Court's Memorandum the Court noted the problem which was raised in three previous cases as to whether the proviso of 7

USC 608 C (14) was a defense to this civil suit and at line 23 of that page the Court states:

“in view of the conclusion I have reached it is unnecessary for me to pass upon the soundness of Judge Hollzer’s decisions.”

“The question remaining is whether or not Lo Bue Brothers wilfully exceeded the quota or allotment fixed for them.”

In Paragraph XIX of the Proposed Findings of Fact, attorney for defendants has interpreted the Court’s Memorandum Decision to support the following Finding * * *

“and defendant Lo Bue Brothers acted in good faith in reliance thereon in filing said petition with the Secretary of Agriculture and in making said twenty-six shipments.”

It must first be noted that there are several possible alternatives the Court may have intended, each slightly different. The decision of the Court may have intended (1):

“that the defendants made the twenty-six shipments of oranges in good faith.”

or (2) for example: [194]

“that the defendants believed in good faith that a petition was on file at the proper time which petition was itself filed when eventually filed in good faith,”

or (3) for example:

“that the shipments were made in good faith and the petition when finally filed on April 9, 1956, was filed in good faith and not for delay,”

or (4) for example:

“that the twenty-six shipments were made in good faith and that defendants in good faith believed the petition was on file at the proper time prior to the shipments and that such petition was itself filed, when filed, in good faith and not for delay.”

Each of the four alternative examples may or may not amount to precisely the same thing. However, any one of them must involve an interpretation of the word “wilfully” which appears in 7 USC 608 a (5). It would appear that, as so interpreted, a defendant can show “non-wilfulness” by showing good faith and good intent in his acts. Such interpretation would appear to imply an affirmative defense which not only includes the terms of the proviso of 7 USC 608 c (14), but goes beyond it in holding mere belief that a petition is on file is a sufficient defense to “wilfulness.” (7 USC 608 c (14) would, itself, at least require that a petition be on file). This would appear as a matter of law to be inconsistent with the Court’s position taken on Page 4 of its Memorandum Decision as quoted above. [195]

Therefore, it is a motion of plaintiff that the Court reconsider its interpretation of the word “wilfully” so that a mere good faith belief on the

part of the defendants in the premises is insufficient to show an absence of "wilfulness," where the acts of defendants were not unconscious or inadvertent.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant U. S. Attorney;

JORDAN A. DREIFUS,
Assistant U. S. Attorney,

/s/ JORDAN A. DREIFUS,
Assistant U. S. Attorney.

Receipt of copy acknowledged.

Lodged June 23, 1958. [196]

[Title of District Court and Cause.]

ORDER SETTLING FINDINGS OF FACT,
AND CONCLUSIONS OF LAW, AND
ORDER ON MOTION FOR RECONSIDER-
ATION AND CLARIFICATION OF DECISION

Defendants' proposed findings of fact, conclusions of law and judgment, plaintiff's objections thereto and plaintiff's motion for reconsideration and clarification of decision were lodged with the Clerk of this Court on June 23, 1958, and counsel for the

parties have stipulated to submit such matters without further argument,

Now, Therefore, the Court being fully advised in the premises, it is ordered:

1. That plaintiff's motion for reconsideration and clarification of decision be, and the same is hereby denied.

2. That plaintiff's objections to the proposed findings of fact be and they are sustained in the following particulars:

(a) That paragraph 15 appearing on page 8 of the proposed findings be modified by striking therefrom the [198] words "by the Hearing Clerk," appearing in line 16;

(b) That the word "correctly" appearing on line 27, in paragraph 18, page 9 of the proposed findings, be stricken and deleted therefrom.

(c) That the word "correctly" appearing in line 9, page 10, paragraph 18, of the proposed findings be stricken and deleted and the word "truthfully" be inserted in lieu thereof, and that the words "by him" be inserted on line 11, page 10, paragraph 18 of the proposed findings between the word "airmailed" and the word "from" appearing in line 11, page 10, paragraph 18 of the proposed findings.

It is further ordered that counsel for the defendants redraft and lodge with the Clerk of this Court proposed findings of fact and conclusions of law consistent with this order and that Rule 7(a) of the

Rules of the United States District Court of the Southern District of California requiring that the findings of fact, conclusions of law and the judgment shall consist of a single document be complied with.

The Clerk of this Court is directed to forthwith mail copies of these orders to all counsel.

Dated : July 9, 1958.

/s/ GILBERT H. JERTBERG,
Judge, United States District
Court.

[Endorsed]: Filed July 9, 1958. [199]

United States District Court, Southern District of
California, Northern Division

No. 1758—ND Civil

UNITED STATES OF AMERICA,
Plaintiff,
vs.

LO BUE BROTHERS, a Partnership, MARIO LO
BUE, FRED LO BUE and JOSEPH LO
BUE, Partners; and WILLIAM LUTHER
WOODALL,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT

The above-entitled cause came on for trial before the Court sitting without a jury, Honorable Gilbert

H. Jertberg, United States District Judge, presiding, on March 11, 1958. The plaintiff was represented by Laughlin E. Waters, United States Attorney, Jordan A. Dreifus, Assistant United States Attorney, appearing, and John S. Griffin, Esq., Attorney for the United States Department of Agriculture, of counsel. The defendants were represented by G. V. Weikert, Esq. Stipulations of facts were presented and received in evidence, and additional evidence, both oral and documentary, was introduced by the respective parties. The cause was argued by counsel and submitted to the Court for decision; and the Court having duly considered the same, and [200] being fully advised in the premises, now makes the following findings of fact and conclusions of law.

The Court finds:

I.

That this is a civil action brought by the United States of America, acting through the United States Attorney for the Southern District of California, at the request of the Secretary of Agriculture.

II.

That the defendants Mario Lo Bue, Fred Lo Bue and Joseph Lo Bue are partners operating as growers, handlers and shippers of navel oranges in Tulare County, California, which is in Central California in the area designated by the Secretary of Agriculture as Prorate District No. 1. At Lindsay, California, within this area they operate an orange packing establishment as a partnership under the trade name Lo Bue Brothers. William Luther

Woodall is the sales manager for Lo Bue Brothers and resides in Tulare County, California.

III.

That pursuant to Title 7, Section 608c of the United States Code, the Secretary of Agriculture issued Marketing Order No. 14, as amended, regulating the handling of navel oranges in the State of Arizona and a designated part of the State of California. The order became effective on October 22, 1953, and has remained constantly in effect since that date.

IV.

That four geographical prorate districts were established by the Secretary of Agriculture under Section 914.66 of Order No. 14 for the purpose of allotting shipments of oranges, as follows:

a. District 1 shall include that portion of the State of California between the 35th Parallel and the 37th Parallel, but shall exclude that portion of Kern County situated south [201] of the Kern River.

b. District 2 shall include that portion of the State of California which is south of the 35th Parallel, but shall exclude Imperial County, California, and that portion of Riverside County, California, situated south and east of White Water, California.

c. District 3 shall include the State of Arizona, Imperial County, California, and that portion of

Riverside County, California, situated south and east of White Water, California.

d. District 4 shall include that portion of Kern County, California, situated south of the Kern River.

V.

That the Secretary of Agriculture fixed the quantity of navel oranges grown in Prorate District 1, which could be handled during the weekly period covered by Navel Orange Regulation No. 81 commencing at 12:01 a.m. on April 1, and ending at 12:01 a.m. on April 8, 1956, at 277,200 cartons as set forth in the Federal Register, 21 F.R. 2037. During the weekly period covered by Navel Orange Regulation No. 82, commencing at 12:01 a.m. on April 8, and ending at 12:01 a.m. on April 15, 1956, the quantity fixed was 231,000 cartons as set forth in the Federal Register, 21 F.R. 2267.

VI.

That on October 18, 1955, Lo Bue Brothers filed with the Navel Orange Administrative Committee an application for a prorate base and allotment to ship navel oranges produced in Prorate District 1 during the 1955-56 marketing season. Based upon such application the committee determined that during the weekly period covered by Navel Orange Regulation No. 81 (12:01 a.m. April 1 to 12:01 a.m. April 8, 1956), Lo Bue Brothers had available for current shipment 3.7622 per cent of all navel oranges produced in District 1 which were available for shipment during such period. [202] Lo Bue Brothers was allotted 10,428 cartons of the 277,200 cartons

fixed by the Secretary of Agriculture as the quantity of navel oranges produced in Prorate District 1 that should be handled during such period.

VII.

That there was paid back to Lo Bue Brothers during the weekly regulation period covered by Navel Orange Regulation No. 81 (12:01 a.m. April 1 to 12:01 a.m. April 8, 1956), allotment totaling 892 cartons which had previously been loaned by Lo Bue Brothers. Under the provisions of Sections 914.55 and 914.57 of Order No. 14, Lo Bue Brothers was permitted to overship its base allotment of 10,428 cartons by 10% or 1,043 cartons, thus making a total of 12,363 cartons of navel oranges available to Lo Bue Brothers for shipment under said allotment during the weekly regulation period covered by Navel Orange Regulation No. 81.

VIII.

That the committee determined that based upon the application filed by Lo Bue Brothers for a prorate base and allotment Lo Bue Brothers had available for current shipment during the weekly period covered by Navel Orange Regulation No. 82 (12:01 a.m. April 8 to 12:01 a.m. April 15, 1956), 3.7671 per cent of all navel oranges produced in District 1 available for current shipment during such period. Lo Bue Brothers was allotted 8,702 cartons of the 231,000 cartons fixed by the Secretary as the quantity of navel oranges that should be handled in Prorate District 1 during such period.

IX.

That there was paid back to Lo Bue Brothers during weekly regulation period covered by Navel Orange Regulation No. 82 (12:01 a.m. April 8, to 12:01 a.m. April 15, 1956), allotment totaling 36 cartons which had previously been loaned by Lo Bue Brothers, making a total of 8,738 cartons of allotment issued or [203] paid back to Lo Bue Brothers during this period. Under Sections 914.55 and 914.57 of the order Lo Bue Brothers was required to deduct from the 8,738 cartons the 1,043 cartons of overshipment made during the weekly regulation period covered by Navel Orange Regulation No. 81 and to repay 262 cartons of allotment which it had previously borrowed from other handlers. After making these adjustments there remained available to Lo Bue Brothers for shipment under said allotment during the weekly regulation period covered by Navel Orange Regulation No. 82 allotment for 7,433 cartons of navel oranges.

X.

That during the weekly period covered by Navel Orange Regulation No. 81 (12:01 a.m. April 1 to 12:01 a.m. April 8, 1956), Lo Bue Brothers handled a total of 35,779 cartons of navel oranges produced in District 1, which was 23,416 cartons in excess of the allotment issued to it by the Navel Orange Administrative Committee for such period.

XI.

That during the weekly period covered by Navel Orange Regulation No. 82 (12:01 a.m. April 8 to

12:01 a.m. April 15, 1956), Lo Bue Brothers handled a total of 16,281 cartons of navel oranges produced in District 1 which was 2,933 cartons in excess of the allotment issued to it by the Navel Orange Administrative Committee, prior to April 9, 1956.

XII.

That the 26,349 cartons of navel oranges produced in Prorate District 1 which Lo Bue Brothers handled in excess of its allotments, prior to April 9, 1956, were shipped by Lo Bue Brothers in twenty-six separate shipments, twenty-three of which were made on April 7, 1956, and three on April 8, 1956. Two of said twenty-six shipments were sold by Lo Bue Brothers before April 9, 1956, for the gross selling price of \$3,520.75, and the balance of [204] said shipments were ultimately sold to various customers throughout the United States for the gross selling price of \$46,349.99.

XIII.

That the navel oranges comprising said twenty-six shipments belonged to fourteen or fifteen growers, and were handled by Lo Bue Brothers only as their agent. The net return to the growers of said fruit amounted to approximately \$29,000.00, the difference going to cover the cost of picking, hauling, handling, loading, shipping and selling the fruit, and the net sum of money received by Lo Bue Brothers as compensation for handling said fruit amounted to approximately \$1,800.00.

XIV.

That on April 5, 1956, Lo Bue Brothers mailed by registered air mail from Los Angeles, California to the Hearing Clerk, Office of the Secretary, U. S. Department of Agriculture, Washington 25, D. C., a petition for relief from Order No. 14, and particularly from the obligations imposed upon Lo Bue Brothers in connection therewith, pursuant to the provisions of Section 608c(15)(A) of the Agricultural Marketing Agreement Act of 1937. (7 U.S.C. 608c(15)(A)). This petition alleged that the normal shipping season for Central California navel oranges ends not later than April 1 of each year; that experience has proved that navel oranges from this district held beyond that date deteriorate so rapidly that they have little or no commercial value. Consequently, it has been the uniform practice prior to the navel shipping season of 1956 to terminate all restrictions on shipments from this district not later than March 25 of each year. It further alleged that in the year 1956, the Navel Orange Administrative Committee with the approval of the Secretary of Agriculture, reduced the quantities of Central California navel oranges permitted to be marketed week by week during the shipping season so far below normal that a large quantity of such oranges remained unharvested and unshipped at the end [205] of March, and said Committee indicated that it intended to continue to restrict weekly shipments of such oranges well into the month of May.

The petition further alleged that meanwhile, Central California navel oranges had come into competi-

tion with Southern California navel oranges, which generally mature later and have a much longer historical life. Market resistance to Central California fruit had been rapidly developing and by April 2, 1956, there was a differential of from 75c to \$1.00 per carton in favor of Southern California fruit due to its superior quality. Continuing deterioration of the Central California fruit would make it practically worthless after the week commencing April 2. Continuation of the Navel Orange Administrative Committee's policy of prorating shipments would have meant that said defendant would be able to ship only about 33 cars of navel oranges between April 2 and May 6, 1956, and would still have had approximately 40 cars left on that date. All such fruit unshipped after the week of April 2 would be a total loss.

It further alleged that the Navel Orange Administrative Committee had been operating with only one member representing Central California and that while so operating had extended and proposed to extend the marketing period for Central California fruit some 8 weeks beyond its historical life, while extending the marketing period for Southern California fruit less than two weeks past its historical life, thus discriminating in favor of Southern California growers, handlers, and shippers. That the action of the Navel Orange Administrative Committee, approved by the Secretary of Agriculture, in restricting the shipment of Central California navel oranges beyond their historical life was arbitrary,

capricious, unreasonable, inequitable, discriminatory, oppressive, unfair, and unjust, that the declared policy and purpose of the Act was thereby defeated, and that said defendant and its growers were thereby being deprived of their property [206] without due process of law, and their property had been and was thereby being taken, confiscated, and destroyed without compensation therefor, all in violation of the Fifth Amendment to the Constitution of the United States.

The petition prayed that the Secretary of Agriculture grant defendant Lo Bue Brothers, a hearing and that all restrictions upon the shipment of Central California navel oranges under Order No. 14 and all obligations imposed in connection therewith be terminated forthwith, or that the defendant be exempted therefrom, and that Order No. 14 be so amended or modified as to prevent a repetition in the future of the situation complained of, or that Order No. 14 be terminated and cancelled forthwith.

XV.

That said petition of defendant Lo Bue Brothers arrived in the Washington, D. C. Post Office about 2:00 p.m. on April 6, 1956, but was not filed in the office of the Secretary of Agriculture, Washington, D. C. until in the afternoon of April 9, 1956.

XVI.

That an answer to the petition of the petitioning defendant Lo Bue Brothers was filed by the Deputy Administrator, Agricultural Marketing Service,

United States Department of Agriculture on May 9, 1956, and a hearing was held on the petition on June 14, 1956, at Los Angeles, California, at which time the petitioning defendant Lo Bue Brothers appeared with counsel and introduced evidence both oral and documentary in support of said petition. Counsel for the Department of Agriculture introduced evidence both oral and documentary in opposition to said petition. Thereafter briefs were filed by both parties and on September 28, 1956, the Hearing Examiner issued a report containing proposed findings of fact and conclusions and recommending that the petition be dismissed. The petitioning defendant Lo Bue Brothers filed written exceptions to [207] this report and on December 3, 1956, the Judicial Officer of the Department of Agriculture issued his decision and order denying the relief requested, and dismissing the petition. The said Judicial Officer refused to make any finding on whether or not said petition was filed and prosecuted in good faith and not for purposes of delay, although requested so to do by Counsel for the Department of Agriculture.

XVII.

That on April 12, 1956, plaintiff filed an action No. 1637-ND in this Court against the defendant Lo Bue Brothers, a partnership, and the defendant partners, to enjoin violations of Order No. 14, under 7 U.S.C. Section 608a(5)(6) of the United States Code. A temporary restraining order against said defendants was issued and was followed on April 19, 1956, by a consent decree for permanent injunc-

tion enjoining them and all of their agents and persons acting for them from violating Order No. 14 and any lawful order, rule, or regulation issued by the Secretary of Agriculture thereunder.

XVIII.

That in filing the aforesaid petition with the Secretary of Agriculture, and in making the aforesaid twenty-six shipments of navel oranges in excess of its allotments on April 7, 1956, and April 8, 1956, defendant Lo Bue Brothers acted and relied upon advice given and information furnished by an attorney at law experienced in the law and the procedure particularly applicable to such matters.

Said attorney advised the defendants that a petition under Section 608c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A)) was the proper and only procedure to obtain an official ruling upon the legality of the allotments imposed upon defendant Lo Bue Brothers under Order No. 14, that when such a petition was filed with the Secretary of Agriculture in good [208] faith the restrictions on shipments in excess of allotments would be suspended until there was a decision on the petition and during that period the petitioner, unless enjoined from further shipments, would be exempt from the penalties prescribed by the Act, and that in the only Court decisions which had been rendered on the subject, the immunity from penalties provided in such cases by Section 608c(14) of the Act (7 U.S.C. 608c(14)) had been construed to

extend to civil penalties as well as criminal penalties.

Said attorney also truthfully informed the defendants that his past experience had established the fact that petitions of this kind air mailed by him from Los Angeles, California to the Secretary of Agriculture at Washington, D. C. were received and filed the next day.

Late in the afternoon on April 6, 1956, said attorney telephoned the defendants at Lindsay, California and informed them that on the previous day he had air mailed the aforesaid petition of defendant Lo Bue Brothers to Washington, D. C., and that by that time said petition would be on file with the Secretary of Agriculture. Said attorney also informed the defendants at that time that if Lo Bue Brothers had navel oranges to ship in excess of its allotment it could begin the next day to make such shipments, and could continue to disregard its allotments unless and until it was restrained or enjoined from making further shipments.

XIX.

That the defendants accepted and believed the said advice and information given them by their said attorney, and defendant Lo Bue Brothers acted in good faith in reliance thereon in filing said petition with the Secretary of Agriculture and in making said twenty-six shipments of navel oranges in excess of its allotments on April 7, 1956 and April 8, 1956, and in so doing defendant Lo Bue Brothers exercised ordinary and reasonable care and caution to

avoid violating Order No. 14, and did not knowingly, intentionally, [209] or wilfully exceed its allotments thereunder.

As Conclusions of Law From the Foregoing Findings of Fact, the Court Concludes:

1. That defendant Lo Bue Brothers did not wilfully exceed any quota or allotment fixed for it under Order No. 14 by the Secretary of Agriculture, within the meaning of Section 608a(5) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608a(5)).

2. That the plaintiff is entitled to take nothing from the defendants, or any of them, by reason of the complaint herein, and the defendants are entitled to judgment in their favor.

Now Therefore, by Reason of the Law and the Premises Aforesaid, It Is Ordered, Adjudged and Decreed that plaintiff take nothing from the defendants, or any of them, and that the complaint herein be and it is hereby dismissed.

Dated July 28, 1958.

/s/ GILBERT H. JERTBERG,
Judge, United States District
Court.

Approved as to Form:

LAUGHLIN E. WATERS,
United States Attorney;
RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief of Civil Division;

JORDAN A. DREIFUS,
Assistant U. S. Attorney,

By /s/ JORDAN A. DREIFUS,
Assistant U. S. Attorney,
Attorneys for Plaintiff.

Lodged July 24, 1958.

[Endorsed]: Filed July 28, 1958.

Entered July 31, 1958. [210]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Plaintiff, United States of America, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on July 31, 1958.

Dated: This 18th day of September, 1958.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant U. S. Attorney;

JORDAN A. DREIFUS,
Assistant U. S. Attorney;

/s/ JORDAN A. DREIFUS,
Assistant U. S. Attorney.

Affidavit of service by mail attached.

[Endorsed]: Filed September 18, 1958. [211]

In the United States District Court, Southern
District of California, Northern Division

No. 1758—ND—Civil

UNITED STATES OF AMERICA,
Plaintiff,
vs.

LO BUE BROTHERS, a Partnership; MARIO
LO BUE, FRED LO BUE and JOSEPH LO
BUE, Partners; and WILLIAM LUTHER
WOODALL,
Defendants.

Honorable Gilbert H. Jertberg, Judge Presiding.

REPORTER'S TRANSCRIPT
OF PROCEEDINGS

March 11 and 12, 1958

Appearances of Counsel:

For the Government:

LAUGHLIN E. WATERS,
United States Attorney, by
JORDAN A. DREIFUS,
Assistant United States Attorney, and
JOHN S. GRIFFIN,
Of Counsel for U. S. Department of
Agriculture.

For the Defendants:

G. V. WEIKERT, ESQ.

The Court: Will you call the case on for trial?

The Clerk: 1758, United States vs. Lo Bue Brothers, for trial.

The Court: The parties are ready?

Mr. Dreifus: Ready, your Honor.

Mr. Weikert: Ready, your Honor.

The Court: All right.

Mr. Dreifus: I would like to make a short statement on behalf of the plaintiff, and to bring up one matter which we feel must be disposed of before we begin the introduction of the evidence.

I think this can best be illustrated by stating briefly what the order of the plaintiff's proof will be. Under the plaintiff's view of the burden of proof we intend to do this, we shall offer in evidence as our first exhibit Paragraphs 1 through 12, inclusive, of the first Stipulation of Facts, which is on file in the court, filed about October 10th or 11th, 1957, I believe.

Now, under the plaintiff's view of the case, and under the plaintiff's theory of the burden of proof, as stated in the plaintiff's trial memorandum, those 12 paragraphs of that first stipulation state a prima facie case. They fully state the allegations of the complaint. [3*]

It is our view that the matters raised by the third affirmative defense of the answer filed by the defendants, and which are the subject of the remaining paragraphs of the stipulation of facts, and which could be the subject of oral testimony, are matters

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

of affirmative defense upon which the burden of proof in the legal sense is on the defendants.

In this connection, by stating that the burden of proof of the third defense of the answer is on the defense, I assume, as we stated in our trial memorandum, that as a part of the allegations thereof, namely, the particular allegation that a 15(A) petition was duly filed with the Secretary of Agriculture, that the word "duly" means that the defense was there alleging positively and in affirmative terms that that petition was filed in good faith and not for delay. Assuming that the plaintiff's view of the burden of proof is correct, and that paragraphs 1 through 12 of the first Stipulation of Facts, along with, I might mention, one oral stipulation that was entered into at the time of the hearing on the motion for summary judgment, which oral stipulation has been reduced to writing in the transcript thereof, that would state a prima facie case for the plaintiff, and it would then be incumbent upon the defendants at that point to go forward with the evidence, if any evidence is had, on the allegation that the 15(A) petition was filed in good faith, and the 15(A) petition was filed not for delay. [4]

We believe, therefore, that in the interest of the parties knowing the proper order of proof that the plaintiff be assured by ruling of the Court that the burden of proof on the two elements of the affirmative defense are indeed on the defendants, and that for this purpose the pleading in the answer of the third affirmative defense be made more specific,

definite and certain, where it alleges that a petition was duly filed, as to whether or not the defendants by that allegation intended to mean that the 15(A) petition was filed in good faith and not for the purpose of delay.

The plaintiff makes this statement because we are in the position of feeling that the defense has the burden of proof to raise this issue affirmatively. Nevertheless, we would not want to be foreclosed by a mere matter of the order of proof from getting in all available evidence on the question regardless of which party has the burden of proof.

I therefore move the Court at this time that the defendants be compelled to make a more specific and definite statement of whether or not the allegation, which specifically appears at line 17 on page 5 of the answer, means that a 15(A) petition there referred to was filed in good faith and not for delay.

(Short interruption for other court matter.)

Mr. Weikert: May it please the Court, I am afraid I do not quite understand the purpose of counsel's motion. There [5] has been no objection, demurrer, or other pleadings filed with respect to the answer, and I don't know whether he expects us to amend our answer at this time, or what. If that is the case, I think the motion is late. Where the burden of proof lies on any issue of the case is a question of law, regardless of what is stated in the answer, and it seems to me that orderly procedure would require the plaintiff to go forward with what-

ever proof he believes is necessary, and rest his case, and we will put in our evidence.

The Court: Of course, the over-all burden of proof, as I see it, rests upon the plaintiff. Now, I think that when we come to this special defense of whether or not the petition was filed in good faith and not for purpose of delay, I would say offhand that the burden of going forward with the evidence on that subject would rest with the defense. That would be my view of it at the present time.

Now, is that clear to you, Mr. Dreifus?

Mr. Dreifus: Yes; it is, your Honor. In view of that, the reason I asked for a more specific and definite statement in the answer was that if the defense introduced no evidence other than the remaining paragraphs of the stipulation, then it is our view that a renewal of the motion for summary judgment would be in order.

The Court: I think we better wait until you see what happens before anticipating a motion you might make. But as I [6] say, it is my view that the over-all burden, the burden is upon the plaintiff to prove by a preponderance of the evidence the essential allegations of the complaint. I think that the burden of proceeding with evidence on that special defense is upon the defendants, and, of course, if they offer no evidence on that subject, that is a problem we will have to face. Your motion, in effect to make their pleading, that third special defense I think it is, more certain, more definite, is probably not timely. The allegation that they duly filed a petition, of course, is really, I

suppose, an allegation of legal conclusion. The fact they have alleged it doesn't establish it. I think we better go forward and see how this thing works out.

Now, as I understand, you are going to introduce in evidence in this trial the first 12 paragraphs of the first stipulation.

Mr. Dreifus: At this time I offer in evidence the paragraphs 1 through 12, inclusive, of the first Stipulation of Facts. I request they be marked Exhibit 1 on behalf of the plaintiff.

The Court: That is the document filed in this court on October 11, 1957, designated Stipulation of Facts and Issues?

Mr. Dreifus: Correct, your Honor.

The Court: All right, the first 12 paragraphs of that document will be received in evidence and will be marked [7] Plaintiff's Exhibit 1.

(The stipulations referred to were marked as Plaintiff's Exhibit 1, and were received in evidence.)

Mr. Dreifus: I ask the Court further to take cognizance of and to receive in evidence the oral stipulations, which have been reduced to writing in a transcript of testimony, which occurred at the hearing on motion for summary judgment.

The Court: Is that document on file?

Mr. Weikert: I do not have a copy of it. I would like counsel to read it.

The Court: Is there a copy in the file? Just a minute, let's see if we can get it.

Mr. Dreifus: For the sake of clarity, your

Honor, the stipulations are short. May I read them into the record?

Page 17, line 23, reads:

“The Court: Well, Lo Bue was the handler; the sales were made or caused to be made by Lo Bue Brothers acting through Mr. Woodall, their sales manager, whether he made the sales directly or caused them to be made through himself or through Arena Brothers?”

“Mr. Weikert: Yes; I would stipulate to that in so many words.”

On page 19, line 3:

“The Court: Well, I assume that the packers, men physically engaged in packing, wouldn’t know or [8] care about the quota. I assume that the general manager would know what the quota was, and when it had been reached and when it had been exceeded.

“Mr. Weikert: I would stipulate further; I would stipulate with counsel that Woodall knew that these shipments were in excess of allotments, but he also knew that the petition had been filed, and he believed that they were exempted.”

That is all, your Honor.

The Court: Just those two. Very well, then, the matters read by counsel will be accepted as facts that have been stipulated by the parties.

Mr. Dreifus: Your Honor, the very last stipulation, I believe, was subject to the implied qualification at the time of Mr. Woodall’s knowledge that the petition had been filed actually meant his belief that it had been filed. Is that correct, counsel?

Mr. Weikert: I don't know. That is the stipulation. I don't think I can improve on it.

Mr. Dreifus: The stipulation as it was arrived at as to the context, your Honor, was of Mr. Woodall's state of mind as of the date and hour of the shipments. Therefore, I believe the word "knew" as used by Mr. Weikert probably was used by him in the sense that Mr. Woodall believed.

The Court: Isn't that the duty that the Court has to [9] perform, to interpret the language in the light of the circumstances surrounding it.

Mr. Dreifus: Thank you, your Honor. With that, your Honor, in view of our contention as to the burden of proof, the plaintiff rests.

Mr. Weikert: In view of the Court's ruling that the burden is now with the defendants to proceed, I will offer in evidence as the defendants' first exhibit paragraphs 13 through 16 of the Stipulation of Facts and Issues heretofore referred to by counsel as the first Stipulation of Facts.

Mr. Dreifus: For the sake of the record, your Honor, the plaintiff objects as immaterial.

The Court: 13, 14——

Mr. Weikert: 13 to 16, both inclusive; in other words, 13, 14, 15 and 16, and, of course, 16 includes the Appendix B attached.

The Court: It seems to me that much of the material contained in paragraphs 13 and 14 raise the question as to the validity of the order, the marketing order; I am not prepared to say for certain, in my brief review of it, but perhaps some reference to constitutionality. It seems to me that the

law is pretty well established, not only in this field but in other areas of the law involving administrative matters, that in the absence of an appeal from the order of the administrative agency this Court has no power, no authority [10] to go into the validity of the order.

Mr. Weikert: They are not offered for that purpose, your Honor. Those portions of the stipulation of facts are offered for the purpose of establishing that the petition was filed, and that the petition was filed upon those grounds. Before I can proceed to show good faith I believe I first have to show that there was good faith about something. In other words, I am showing by this offer that the petition was filed and that there were proceedings on it. Then I next intended to offer as the next exhibit the decision of the judicial officer on the petition. Then we will have before the Court the fact that a petition was filed and that action was taken on it. That is all. I am not asking the Court, in other words, to go into the merits of the petition.

The Court: In other words, these paragraphs of the stipulation that you have designated are offered in evidence solely on the issue of your third affirmative defense, that the petition was filed in good faith and not for purposes of delay?

Mr. Weikert: That is right, and they are merely descriptive of the nature of the petition.

The Court: Do you have anything to say?

Mr. Dreifus: We still believe, your Honor, that the matter is immaterial even for that purpose,

since it has nothing directly to do with the state of mind of the defendants, [11] because it is not essentially connected up with the final element.

The Court: Of course, for the first time in the record in this trial there has been offered a statement that a petition was filed. Now until there is evidence that a petition was filed, as suggested by counsel, there isn't much use going into the question as to the motives or the reasons behind the filing of that petition. Well, I am going——

Mr. Dreifus: May I add one more ground, your Honor?

The Court: Yes.

Mr. Dreifus: The other ground is that Section 608c(14) is inapplicable.

The Court: Yes; that is a legal problem that is involved here. I will admit the allegations contained in paragraphs 13, 14, 15 and 16 of the Stipulation of Facts, for the sole purpose of what bearing it has in relation to the third affirmative defense, what bearing it has with reference to the issue of good faith, and that the petition was not filed for purposes of delay. I am not receiving it to establish the truth of those allegations as a substantive thing. In other words, I feel that this Court is powerless to review the action of this administrative agency where the record shows that no appeal was taken. Do counsel understand clearly the ruling of the Courts as to the purpose for which this evidence is being received? [12]

Mr. Dreifus: That is, as I understand it, sub-

ject to the Court's determination as to whether 608c(14) applies?

The Court: Oh, yes; I think probably all these matters are subject to the determination as to the law as the Court finds it may apply to the facts.

Those paragraphs then for the limited purpose stated will be received and marked Defendants' Exhibit A.

(The stipulations referred to were marked as Defendants' Exhibit A, and were received in evidence.)

Mr. Weikert: Now, I offer as Defendants' Exhibit B a copy of the decision of the judicial officer on the so-called 15(A) petition referred to in Exhibit A, and I might state to counsel that this is one I removed from the document that was filed by counsel as an exhibit attached to the motion for summary judgment. Do you have another one?

Mr. Dreifus: I will stipulate to the authenticity of the document, your Honor. However, I have some objection.

The Court: You make your objection for the record.

Mr. Dreifus: It is objected to as immaterial on the same ground as the previous matter, the previous defendants' exhibit that we objected to; with the additional observation that, as the Court knows, as was more fully gone into on the motion to compel testimony, the decision of the hearing officer has no bearing on the issue of good faith or purpose of delay.

The Court: Well, I will overrule the objections, and I [13] will receive the document as Defendants' Exhibit B, for the limited purpose of what bearing the document has in relation to this third special defense set up in the defendants' answer. It will be limited to that purpose. That will be Defendants' Exhibit B in evidence.

(The document referred to was marked as Defendants' Exhibit B, and was received in evidence.)

Mr. Weikert: I call Mr. Mario Lo Bue.

MARIO LO BUE

one of the defendants, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Mario Lo Bue.

The Clerk: Have that seat there.

The Court: If it is more convenient, Mr. Weikert, you may remain at counsel table. Ordinarily I find when counsel stand at the lectern they are inclined to keep their voices up and the witness tries to make the counsel hear. If you have a number of documents and it is more convenient, you may remain at counsel table.

Mr. Weikert: Whatever the Court would prefer; I do have a lot of documents.

The Court: As long as you keep your voice up, whatever enables you to work better it is satis-

(Testimony of Mario Lo Bue.)

factory to me. [14] Ordinarily counsel stand at the lectern.

Mr. Weikert: Thank you.

Direct Examination

By Mr. Weikert:

Q. Will you state your name, please, Mr. Lo Bue? A. Mario Lo Bue.

Q. Where do you live? A. Lindsay.

Q. And you are one of the defendants in this action, named as a partner in Lo Bue Brothers, a partnership? A. I am.

Q. Who are the partners?

A. Well, there is Fred Lo Bue, Joe Lo Bue and myself.

Q. They are your brothers? A. They are.

Q. Do you have some particular function in the partnership which is different from those of your brothers?

A. Well, I am the managing partner.

Q. And what do you do as managing partner?

A. Just what the name implies, manage.

Q. Well, be a little more specific.

A. Well, I look after the packing house in particular, and look after one of the groves.

Q. And as a part of your duties do you oversee the shipment of fruit? [15] A. Yes.

Q. And do you also oversee the matter of keeping the books and records of the partnership?

A. Yes; I do.

(Testimony of Mario Lo Bue.)

Q. Do either of your brothers have anything to do with the operations of the packing house, or the office? A. No; they do not.

Q. At any time, have they?

A. No, not (pause)——

Q. Now, going back to the spring, the early spring of the year 1956, will you please state in your own words the facts, circumstances which led up to the shipment of the fruit which is the subject matter of this action?

A. Well, the fact the fruit was deteriorating and dropping heavy on the ground is what made us seek this advice to see whether we could ship any of this fruit.

Q. Now, what did you do?

A. We sought advice from counsel, legal advice.

Q. Meaning myself? A. Yes.

Q. And what advice did you seek?

A. We sought to get protection on these oranges that was dropping. We felt there was some law that would protect the grower from losing all this fruit, and we came to see you with that. [16]

Q. Why was the fruit dropping and deteriorating? What was the circumstance?

A. Well, it had gone way beyond the historical life and the fruit was just dropping.

Q. You mean the regulation of shipments?

A. Yes.

Q. And you did consult me then?

A. Yes; we did.

Q. And what did I advise you?

(Testimony of Mario Lo Bue.)

A. You advised us that by filing a 15(A) that we could ship these oranges and be in our rights, the law gave us that right, so we went ahead on that idea there that you had given us.

Q. Did you come to Los Angeles and sign the 15(A) petition in my office? A. Yes; I did.

Q. And you swore to it there? A. Yes.

Q. And then were you advised at a later time that the petition had been filed? A. Yes.

Q. By whom? A. By yourself.

Q. And by what means of communication?

A. Telephone. [17]

Q. From Los Angeles to Lindsay?

A. Yes.

Q. And was it after that that you shipped the fruit here in question? A. Yes; we did.

Q. Did you rely on the advice that I gave you?

A. Oh, hundred per cent; I wouldn't have done it otherwise.

Q. Did you believe that when you were making these shipments you were violating any law or any order or any allotment? A. No.

Q. Would you have made these shipments if you had felt that you were violating any law, order or allotment? A. Not—before we had filed?

The Court: Read the question.

(Question read.)

A. No. Not if we had any kind of violation.

Q. What did you have in mind primarily in filing this petition?

(Testimony of Mario Lo Bue.)

A. We thought our legal rights was being violated by having this fruit go to waste.

Q. Did I advise you that the only way to proceed, in order to get a determination on those rights, was through the filing of a 15(A) petition?

A. Yes. [18]

Q. Did I say anything to you about an injunction? A. Yes; you did.

Q. What was that?

A. That we would probably be served an injunction in case we had to stop as soon as we got it.

Mr. Weikert: May I approach the witness with some documents, your Honor?

The Court: Yes.

Mr. Weikert: Mr. Lo Bue——

The Court: Has counsel seen the documents?

Mr. Weikert: Yes; it is part of the Stipulation of Facts.

Q. I show you Appendix A, which is a part of the Stipulation of Facts, called the first stipulation of facts, and which lists the 26 shipments made on Saturday—withdraw that—the 23 shipments made on Saturday, April 4, 1956, and the three shipments made on Sunday, April 8, 1956, and I will ask you——

The Court: Just a minute. Would you read that back, I didn't quite understand it, Miss Schulke?

(Question read.)

The Court: You have four days there between Saturday and Sunday.

(Testimony of Mario Lo Bue.)

Mr. Weikert: Did I say——

The Court: You might read it back to Mr. Weikert.

(Question reread.) [19]

Mr. Weikert: I am sorry, I meant April 7th, Saturday, April 7th, and Sunday, April 8th. Thank you for catching that, your Honor.

The Court: Well, in other words, there were 23 shipments made on April 7th, which was Saturday?

Mr. Weikert: That is right.

The Court: And there were how many shipments on Sunday?

Mr. Weikert: Three.

The Court: Three shipments on Sunday, April 8th. All right.

Q. (By Mr. Weikert): I will ask you, Mr. Lo Bue, to state whether you are familiar with all of those transactions? A. Yes; I am.

Q. And all of the records pertaining to them were made under your general supervision?

A. They were.

Q. Now, can you state when, referring to the hour approximately, the three shipments listed on Sunday, April 8th, were made?

A. Beginning about midnight, or thereabouts.

Q. Louder, the Judge can't hear you?

A. Around midnight, or thereabouts.

The Court: Midnight of Sunday night, or——

Q. (By Mr. Weikert): Sunday night, or [20] Saturday?

(Testimony of Mario Lo Bue.)

A. April 8th, is that Saturday?

Q. That is Sunday.

A. That would be Sunday night.

Mr. Dreifus: Excuse me. To make it clear, could the witness indicate whether it was prior to 11:59 or prior to——

Q. (By Mr. Weikert): Were they prior to midnight, Saturday, or after midnight, Saturday?

A. Probably more likely after midnight Saturday.

Q. After midnight, but, nevertheless, were they made Saturday night rather than in the daytime on Sunday?

Mr. Dreifus: Aren't we talking about Sunday here, the three?

Mr. Weikert: I asked whether they were made at nighttime rather than in the daytime on Sunday.

Mr. Dreifus: Well, now, are you referring to the early morning hours on Sunday?

Q. (By Mr. Weikert): The early morning hours, starting at 12:01 a.m.

A. They were tagged out on Saturday.

Q. Just answer my question. Were they shipped out in the early morning hours on Sunday, or in the daylight hours?

A. In the early morning hours.

Q. The Judge can't hear you.

A. Early morning hours, Sunday. [21]

Q. Now, can you state which, if any, of these shipments were actually sold at the time they were shipped?

(Testimony of Mario Lo Bue.)

Mr. Dreifus: Objected to as immaterial.

The Court: Well, I will overrule the objection.

A. Two I know of were sold on the same day.

Q. (By Mr. Weikert): Which ones were they?

A. Two to Safeway Stores.

Q. The two to Safeway, in other words, the first item 855 cartons, and the one, two, three, four—the tenth item at line 24, 1025 cartons? A. Right.

Q. Now, when were the others actually sold?

A. At a later date. They all went through our broker, A. Arena & Company, and he took care of the sales.

Q. At some date after the 8th?

A. Yes; several days after the 8th.

Q. Now, Mr. Lo Bue, it has been stipulated to, as a part of the plaintiff's case, in paragraph 12 of the first stipulation, that these 26 shipments totaled 26,349 cartons of navel oranges, and that Lo Bue Brothers ultimately received the gross sum of approximately \$49,870.74 for the sale of those oranges. Will you please state whether that sum of \$49,870.74 was retained by Lo Bue Brothers? [22]

Mr. Dreifus: Objected to as immaterial.

The Court: I will overrule the objection.

A. No; it was not.

Q. (By Mr. Weikert): How much of it was retained by Lo Bue Brothers?

The Court: The same objection?

Mr. Dreifus: The same objection, your Honor.

The Court: All right, it will be the same ruling.

(Testimony of Mario Lo Bue.)

A. Oh, in the neighborhood of 20,100 some dollars.

Q. (By Mr. Weikert): What became of the remainder?

A. Well, that was growers' money, it was given to them in their pool.

Q. In other words, this fruit in these 22 shipments belonged to whom?

A. Various growers.

Q. It was not Lo Bue Brothers' fruit that belonged to the packing house, is that right?

A. No; we had just a very small part, very small per cent was Lo Bue's fruit.

Q. Now, the difference then between this 20,100 some odd and the 49,870 was returned to the growers for their fruit?

A. That is right; it was their money.

Q. Now, did this sum of 20,150 odd dollars represent profit to Lo Bue Brothers on these shipments? [23]

A. No.

Q. Why not?

A. Well, we had all our expenses come out of that, such as packing, packing supplies, labor, and everything involved with packing oranges and also selling charges was paid to Arena for selling those.

Q. Can you state approximately the amount of net profit that was derived by Lo Bue Brothers on these 26 shipments?

A. I would say in the neighborhood of \$1,800, actual profit.

(Testimony of Mario Lo Bue.)

Q. Do you know anything about the manner in which mail is handled in the District of Columbia?

A. I don't even know in Lindsay.

Q. In other words, your answer is you don't?

A. I don't.

Mr. Weikert: You may cross-examine.

The Court: I think we will have our afternoon recess at this time.

(Short recess.)

Mr. Dreifus: First of all, the plaintiff moves to strike the testimony of the witness insofar as it relates to a price, or profit, as it related to shipments of oranges, rather than market value thereof.

The Court: I will deny the motion. [24]

Cross-Examination

By Mr. Dreifus:

Q. In your partnership which you have testified about on direct what are the partnership interests, by percentage?

Mr. Weikert: That is objected to as wholly immaterial.

The Court: I will overrule the objection.

A. A third, equal parts.

Q. (By Mr. Dreifus): Does Mr. Woodall, the manager, own any part of the partnership?

A. No.

Mr. Weikert: That assumes something not in evidence. Mr. Lo Bue is the manager.

The Court: Well, this is cross-examination, and

(Testimony of Mario Lo Bue.)

I think that where the witness has testified that certain parties are the partners that it is proper cross-examination.

Mr. Weikert: My point was, your Honor, that I thought counsel made a slip of the tongue. Mr. Woodall is the sales manager, and Mr. Lo Bue is the manager. He said Mr. Lo Bue, the manager, that is my only point.

Mr. Dreifus: I will qualify the question to Mr. Woodall, the sales manager.

The Court: Read the question as reframed.

(The question was read as follows: Does Mr. Woodall, the sales manager, own any part of the partnership?) [25]

A. No.

Q. (By Mr. Dreifus): Now, you stated on direct that you had fruit you desired to ship during March, 1956, and April, 1956, is that correct?

A. Yes.

Q. And you were unable to ship this fruit?

A. Right.

Q. Why?

A. Well, we had regulations and laws we had to go by.

Q. In other words, they limited the amount of fruit you could ship, is that right?

A. That is right.

Q. Navel oranges? A. Yes.

Q. Now, at the time you spoke to Mr. Weikert,

(Testimony of Mario Lo Bue.)

had you attended a meeting of what is known as the Navel Orange Administrative Committee?

A. That particular day?

Q. Within a week or two weeks before that particular day? A. No; I did not.

Q. Or after that particular day? A. No.

Q. On that particular day?

A. No; I had attended no meetings at all. [26]

Q. You have never attended any meetings of the Navel Orange Administrative Committee during March or April, 1956?

A. I attended just one meeting, it was way, way before this one.

Q. Do you know where the Navel Orange Administrative Committee meets?

A. You mean the address?

Q. What city? A. In Los Angeles.

Q. Do you know about where in Los Angeles?

A. I have forgotten the street address. It is on 7th Street, I believe.

Q. You were not there at a committee meeting during March or April, 1956?

A. I could have been there in March, I don't remember. I was there just once, I don't remember what the date was.

Q. Now, you stated on your direct examination that while the fruit was actually shipped on the 7th and 8th, the fruit which is the subject of paragraph 12 of our stipulation, that the sales of that fruit were made on other dates? A. Yes.

Q. And some of the sales were made after the

(Testimony of Mario Lo Bue.)

8th of April, weren't they? A. Yes.

Q. Is it not true that the purpose of shipping such [27] fruit in freight cars unsold and making the sales after the date on that particular week end was for the purpose of seeing to it that the freight cars were rolled, so to speak, not later than Sunday? A. I didn't understand the question.

Mr. Dreifus: Would you read the question back, please?

(Question read.)

The Court: I don't know that the question is entirely clear and free from ambiguity. Can you simplify the question?

The Witness: I can't understand it.

Mr. Dreifus: Yes. I will withdraw that question.

Q. Were you served on Monday or Tuesday, the 9th or 10th of April, with an injunction?

Mr. Weikert: Just a moment. We have in our stipulation of facts the exact date, and I don't believe the witness should be asked to call upon his memory.

Mr. Dreifus: I believe the date is the 10th.

Mr. Weikert: My recollection is it was the 12th.

The Court: My recollection is it was the 12th, but let's check it, we ought to be able to determine that accurately from our records.

Mr. Griffin: 15.

The Court: Do you have it, Mr. Griffin?

Mr. Griffin: Yes; it is stipulation 15, your

(Testimony of Mario Lo Bue.)

Honor, on April 12th the plaintiff filed an action to enjoin the [28] violation. I believe it was served on that same day, too, your Honor.

The Court: Well, if there is any question, we can certainly get the clerk to advise when the petition or complaint for an injunction was filed. Is there any question that it was April 12th?

Mr. Dreifus: I believe the stipulation is correct, your Honor.

The Court: All right.

Q. (By Mr. Dreifus): I will withdraw the previous question. You were served with an injunction on April 12, 1956? A. Yes.

Q. Now, did you realize that the government would file suit against you in the injunction case and get the injunction against you at the time you shipped the fruit?

A. We would be stopped from shipping?

Q. Yes.

A. Yes; we were told by counsel we would probably get the notice we would have to stop, which we did.

Q. Do you know whether your counsel took steps to dispute this injunction?

A. Not to my knowledge.

Q. Did you, through your counsel, later consent to the injunction being made permanent? [29]

Mr. Weikert: That is also covered by the stipulation of facts.

Mr. Dreifus: I am sorry, your Honor; I believe it is.

(Testimony of Mario Lo Bue.)

The Court: I thought so.

Q. (By Mr. Dreifus): Now, when you shipped the fruit over the week end of the 7th and 8th of April, when the shipments actually went out in freight cars, were you afraid over the week end of having an injunction against you? A. No.

Q. Why not?

A. Well, I figured it would come sooner or later but I didn't know it would be on a Saturday or Sunday. I wasn't there Sunday in the office at all.

Q. Did you know whether the government could have gotten an injunction even before you made the shipments on the Saturday and Sunday on which they were made?

Mr. Weikert: That is objected to as calling for a legal conclusion.

The Court: I think it is a conclusion, probably mixed fact and law, whether they could, whether they were legally entitled to, in other words, could they put the machinery in effect? I think I will sustain the objection to the question.

Mr. Dreifus: May I make a short statement, your Honor? One of the principal bases of this witness' justification for [30] this petition is it was on the advice of counsel. I regret to state that that being the principal ground it seems unavoidable sooner or later the actual advice and whatever ramifications there were to it is liable to come into issue.

The Court: Well, the witness has testified that he received advice from his counsel, and included in

(Testimony of Mario Lo Bue.)

that advice was the right of the government to enjoin shipments, that if an injunction was filed the shipments would have to stop. It is all part of what the witness has already testified to. Now, whether the government could it seems to me is a question not properly put to this witness.

Q. (By Mr. Dreifus): Mr. Lo Bue, at the time you made the shipments, or immediately prior thereto, you stated you relied on the advice of Mr. Weikert, your counsel? A. Yes; we did.

Q. Did Mr. Weikert tell you that you could expect the injunction even before the shipment?

A. No; he didn't. I don't think he ever mentioned the date we would get the injunction. He said some later date we would probably get an injunction. He didn't say what date.

Q. A later date after the shipments were made?

A. He said a later date. He didn't say after the shipments were made.

Q. Do you recall my asking you approximately the same [31] question on a deposition on February 27, 1958, in Mr. Weikert's office?

A. One very similar.

Q. Can you recall the answer you gave to the question at the time? A. Not offhand.

Mr. Dreifus: The deposition I mention, at page 8, lines 14 through 19.

Mr. Weikert: Thank you.

Q. (By Mr. Dreifus): Just read to yourself that question and answer, lines 14 to 19.

(Testimony of Mario Lo Bue.)

A. 14 to 19, yes. 21? No.

Q. Now, that answer to that question I just showed you, that was the truth when you gave it?

Mr. Weikert: That is objected to as not the proper way to impeach the witness.

The Court: That's right. If you have what you feel is an impeaching answer, you read the question to the witness, and read the answer, and ask him if that question was asked of him and if he gave that answer at the time of taking his deposition.

Mr. Dreifus: Was this question asked of you——

The Court: No; I don't know what the question is. You have got to read it, Mr. Dreifus. [32]

Mr. Dreifus: "Q. At the time you made the shipment, did Mr. Weikert tell you you could expect the injunction even before the shipment or after the shipment was made?

"A. Well, it would have to be after. You couldn't get it before, I don't suppose. I don't know how you could get one before. I don't know."

The Court: Ask the witness if that question was asked him and if he gave that answer.

Q. (By Mr. Dreifus): Was that question asked of you, and did you give that answer at the time?

A. I must have if it is on there.

Q. Now you stated you signed the 15(A) petition yourself, prior to the filing of it?

A. Yes; I did.

Q. Are you familiar with the allegations of the petition, the substance of it?

(Testimony of Mario Lo Bue.)

A. You mean what rights it gives us, gave us?

Q. Rather, are you familiar with what was stated in the petition as to why the pro rate allowments and marketing order you felt were illegal?

A. Well, I read the article, but I was not familiar with the words, they are legal words, and I am not a lawyer.

Q. Now, did Mr. Weikert explain to you that the purpose of filing a 15(A) petition was to see if you could declare the [33] prorated allotment and marketing order was void or illegal?

A. You mean by filing 15(A) it would be void?

Q. Yes.

A. I don't understand that question.

(Question read.)

A. I still don't quite understand, Mr. Dreifus.

Q. In your own words, would you repeat what you stated? I don't know whether you stated on direct the purpose which you had in mind in filing the 15(A) petition.

A. Well, because the fruit was going bad, that was the only reason. The fruit was just deteriorating, and we just sought legal advice.

Mr. Weikert: Will you speak up? Will you read that?

(Answer read.)

Q. (By Mr. Dreifus): Now, you stated you wanted to ship your oranges, I believe, that is the main reason you filed the petition?

(Testimony of Mario Lo Bue.)

A. Yes; because they were going bad. We wanted to ship them because they were no good on the ground.

Q. And are these particular oranges you referred to the ones you shipped in the 26 carloads?

A. All we had, I don't remember.

Q. Including these 26 carloads you shipped over the 7th and 8th of April? A. Yes. [34]

Q. And then after you shipped these carloads of oranges, and assuming that this was a legal shipment of carloads of oranges, did you then feel that your legal rights had been completely vindicated?

The Court: Well, I don't see that is going to be of assistance to the Court.

Mr. Dreifus: I am trying to get at his own state of mind, your Honor. Perhaps I can rephrase the question. I will withdraw that question.

Q. At the time you filed this 15(A) petition, you felt that the government was violating your rights with respect to just these particular oranges that you shipped around the 7th and 8th of April, 1956?

A. It was all oranges, not just particularly ours.

Q. Well, just limiting it to your oranges.

A. Not my own, no. You mean our own personal oranges?

Q. I mean those you shipped.

A. No; the whole district.

Q. Well, did you feel that you were filing a petition on behalf of the whole prorated district?

A. No.

(Testimony of Mario Lo Bue.)

Mr. Weikert: That is objected to as argumentative.

The Court: I think it is.

Mr. Dreifus: I withdraw the question.

Q. Now, Mr. Weikert, you state, I believe, informed you [35] by telephone that the petition had been filed? A. Yes.

Q. Now, you signed the petition on Thursday, April 5th, is that correct?

A. I don't know what date it was.

The Court: It is stated in the stipulation.

Mr. Dreifus: It is already in evidence that you signed the petition on April 5th.

A. It could have been. I don't recall the date. It was a weekday, is all I can remember.

Q. Which would be a Thursday?

A. I don't recall; it could have been Monday.

Q. Well, now, assuming that Mr. Weikert called you at some time after your signing the petition and some time prior to the actual shipment of the oranges, which took place on the following Saturday and Sunday, did Mr. Weikert call you on that Friday in between?

A. Before we shipped? The day before we shipped?

Q. Yes.

A. He called us before we could start shipping. He called and said it was filed and we could go ahead and ship, and there would be no violation.

The Court: The stipulation, paragraph 13, states on April 5, 1956, the document, the petition was

(Testimony of Mario Lo Bue.)

mailed. I don't know whether the stipulation covers when the witness signed it, [36] whether he signed it on the day it was mailed or not.

Q. (By Mr. Dreifus): Now, did Mr. Lo Bue, your sales manager, to your knowledge, consult with Mr. Weikert?

The Court: You are talking about the sales manager?

Mr. Dreifus: Yes.

The Court: What is his name?

Mr. Dreifus: Mr. Woodall. Excuse me, please.

Q. Did Mr. Woodall, your sales manager, to your knowledge, consult with Mr. Weikert prior to your signing the petition?

A. Could have; he was down in Los Angeles at the broker's office.

Q. Well, either you or Mr. Woodall had consulted with Mr. Weikert concerning the preparation of such a petition prior to the day you signed it, is that correct? A. Yes.

Q. Can you recall how long before the day you signed the petition it was that you consulted with Mr. Weikert, and engaged him to prepare such a petition?

A. No; I don't recall how long it was now.

Q. But it was prior to that day? A. Yes.

Q. Now, there was some urgency connected with the shipment of the oranges, was there not?

A. Yes. [37]

Q. They were, as you say, dropping on the ground and spoiling?

(Testimony of Mario Lo Bue.)

A. Yes; getting puffier, and everything wrong.

The Court: You will have to speak louder. It is difficult for me to hear and I am sure Mr. Weikert can't hear you. Would you read the last answer?

(Answer read.)

Q. (By Mr. Dreifus): Why, if that was the case, did you wait any length of time at all between the time you first consulted with Mr. Weikert and the time you came down to sign the petition and caused its filing?

A. Well, we was watching the different pools as we went along, they kept getting worse and worse, and just something had to be done, it just got so bad.

Q. But you state that you consulted with Mr. Weikert at some time prior to the day on which you signed the petition? A. Yes; we did.

Q. Why, if it was against your interest to delay in any amount whatsoever, did you delay from the time you first consulted with Mr. Weikert, from that time until the day on which the petition was filed?

Mr. Weikert: That is objected to——

The Court: Let me say this, Mr. Dreifus: I realize this is cross-examination. The witness testified he consulted, he [38] or Mr. Woodall consulted Mr. Weikert prior to the date on which the petition was signed. Now, I don't know whether there was any delay between the first consultation and the signing of the petition. After all, I know from

(Testimony of Mario Lo Bue.)

my own experience that lawyers just can't go to a shelf and pick out a petition and mail it. There has to be some time for a lawyer to analyze the matter and to prepare the required documents. Now, I think before we talk about delay we should, if we can find out from the witness the time that elapsed between. It is one thing if you consult a lawyer six months before coming back, and another if you consult a lawyer a day or two before a petition is filed. You have got to allow even a lawyer some time to do his work.

Q. (By Mr. Dreifus): Calling your attention to Mr. Woodall, your sales manager, you stated that Mr. Woodall could have consulted with Mr. Weikert at some time prior to the date on which you signed the petition? A. Yes.

Q. If he did so, it was in behalf of Lo Bue Brothers, was it not? A. Yes.

Q. Do you know whether Mr. Woodall consulted with Mr. Weikert on the same day as a Navel Orange Administrative Committee meeting was held which took place on March 29, 1956? [39]

A. I don't know if he did the same day or not.

Q. If it was not the same day, was it a day shortly before or after that day?

A. I can't remember that. I really don't know whether it was before or after.

Q. Now, you were present when Mr. Woodall's deposition was taken on January 28, 1958, and on February 27, 1958? A. I was; yes.

(Testimony of Mario Lo Bue.)

Q. Did you hear Mr. Woodall testify that he consulted with Mr. Weikert on a day prior to the day on which you signed the petition?

A. I don't remember what day it was. I don't remember him saying what day.

Mr. Dreifus: One moment, your Honor. No further questions of this witness.

Mr. Weikert: No further questions.

The Court: I would like to ask the witness a few questions. According to your testimony there were 23 carloads shipped on April 7th, which was Saturday, is that right?

The Witness: Yes.

The Court: Now, do you know when they were shipped, during the daytime on Saturday, or at night, or when?

The Witness: Well, the rail pickup is around midnight.

The Court: So that would be, say, after midnight on Saturday? That would be early [40] Sunday?

The Witness: It is after 12:59.

The Court: All right, then there were three carloads that would be shipped after midnight on the next night?

The Witness: Right.

The Court: Is that right?

The Witness: Yes.

The Court: Now, you are also an orange grower?

The Witness: Yes.

(Testimony of Mario Lo Bue.)

The Court: And you have a grove, or the partnership has?

The Witness: Yes; we have.

The Court: And were any of your oranges included in these shipments?

The Witness: Yes; they were.

Mr. Dreifus: Pardon me, your Honor, there is one thing not clear. The 23 carloads, I believe, the witness referred to, were shipped, if I understood the witness correctly, after 12:01 a.m., Saturday.

Mr. Weikert: No. Oh, Saturday. Yes.

The Court: Yes; that is what I say; that is really Sunday morning, isn't it?

Mr. Dreifus: No; that would be Saturday morning; it would be Friday night.

The Court: I would like to get that clear. Saturday was the 7th; Friday was the 6th. Now, were these 23 carloads shipped, we will say, early Saturday morning, after midnight [41] of Friday night?

The Witness: After midnight, yes.

The Court: Of Friday night?

The Witness: That was the 6th. I don't recall whether that was Saturday.

The Court: I think everybody——

The Witness: If it is Saturday.

The Court: ——has recognized in this hearing that Saturday was the 7th, Sunday was the 8th.

Mr. Dreifus: Correct, your Honor.

The Witness: Yes.

The Court: So it is your best belief now that

(Testimony of Mario Lo Bue.)

the 23 carloads went out after 12:00 o'clock midnight of Friday——

The Witness: Yes.

The Court: ——which would be on the 7th?

The Witness: Yes.

The Court: Early Saturday morning?

The Witness: Yes.

The Court: And that the other three carloads went out after midnight on——

The Witness: The following day.

The Court: ——the 8th——

The Witness: Following day.

The Court: ——which was early Sunday morning?

The Witness: Right. [42]

The Court: Now, coming back to your oranges, with respect to oranges belonging to other growers, are you a broker or a commission merchant? What is the basis upon which you ship oranges belonging to other growers?

The Witness: On a consignment basis.

The Court: On a consignment basis. And for your services—well, first, you have a packing house?

The Witness: We do.

The Court: And you receive the oranges of these growers——

The Witness: Yes.

The Court: ——and I don't know exactly what you do, but among other things I suppose you have them wrapped in paper, do you?

(Testimony of Mario Lo Bue.)

The Witness: We used to; we now put them in cartons.

The Court: Put them in these cardboard cartons?

The Witness: We pack and sell them for the account of growers.

The Court: And I suppose they are different sizes?

The Witness: Yes.

The Court: And they are shipped in different cartons?

The Witness: Various sizes and various grades.

The Court: All right. Then they are consigned, and after the oranges have been sold—I am talking about oranges belonging to other growers—after they have been sold, the proceeds of sale come to you—— [43]

The Witness: Yes.

The Court: ——and out of that you deduct any railroad charges, any packing costs——

The Witness: Yes.

The Court: ——things of that sort, and then you deduct a commission, selling charge?

The Witness: Packing and selling is deducted.

The Court: Packing and selling are deducted?

The Witness: And the balance is returned to the growers.

The Court: The balance is returned to the growers, and with respect to your own oranges, why, you, of course, have the same expenses in connection with your packing and selling?

(Testimony of Mario Lo Bue.)

The Witness: Yes; we put ourselves in just like the other growers.

The Court: Yes. Do you know out of the entire shipment what percentage was your oranges, as distinguished from the percentage belonging to the other growers?

The Witness: Of the 26 cars?

The Court: Yes.

The Witness: We have what we call a two-week pool, and these oranges were about double the amount in the pool as what is represented by these 26 cars. It is hard to distinguish.

The Court: It is hard to tell if these were in this pool——

The Witness: This fruit was in those pools. We had about double the amount in the pool. Once they are packed [44] they lose identity, we don't know whose they are.

The Court: Well, out of the entire pool then, what percentage would be yours?

The Witness: I would say about five or six per cent of the whole pool, which was double the amount of these cars in question.

The Court: Now, the 23 cars were disposed of to Safeway Stores?

The Witness: No; not all of them. Just two, I believe.

The Court: Two cars?

The Witness: Yes. The rest was through our broker, just consigned to him and they went to various concerns.

(Testimony of Mario Lo Bue.)

The Court: Was the sale to Safeway a direct sale made by you?

The Witness: Yes.

The Court: I see. The rest of it was Arena; is he a handler or receiver, broker?

The Witness: Broker. He sells to the eastern market and collects for them and pays us.

The Court: All right. I have no further questions.

Redirect Examination

By Mr. Weikert:

Q. Mr. Lo Bue, about how many growers were in this pool that covered among other shipments these 26?

A. Oh, 15 or 18, in that neighborhood. [45]

Q. Can you name any of them?

A. Oh, yes; Mr. Boswell, Mr. Wittmore, Mr. Carter, Dr. McClaskey, Mr. Sherry, Mr. Young, quite a few of them.

Q. Were all of these 26 shipments made in railroad cars, or were some of them made in trucks?

A. I believe there was one made in truck; the rest was all cars.

Mr. Weikert: That is all.

Mr. Dreifus: Excuse me, your Honor.

The Court: Just a minute.

Mr. Dreifus: It was our impression that the 26 shipments were 26 railroad cars, as stipulated to in paragraph 12. May I consult with counsel a moment?

(Testimony of Mario Lo Bue.)

Mr. Weikert: I don't see anything about railroad cars; it just says "shipment."

The Court: Paragraph 12 says 26,349 cartons handled in excess of their allotment were ultimately sold to various customers.

Mr. Weikert: Well, the very first shipment, 855 cartons, that is not a carload. There are 1025 in a carload.

The Court: Oh, yes; that appears in, what, paragraph 10?

Mr. Weikert: It is in the Appendix A, attached to the stipulation of facts, first item of Safeway Stores, 855 cartons. Then on the next page, on the 8th, the first item is 883 cartons, which would seem to indicate it is not a carload. [46]

The Witness: That could be a truck, too.

Mr. Dreifus: Your Honor, we have evidence in a deposition, which I believe could settle this matter.

The Court: Is it material?

Mr. Dreifus: I don't believe it is material, your Honor. It would take up the time of the Court at this time to figure which were the truck shipments. The evidence is available.

The Court: What difference would it make as far as enabling me to make a decision on this case?

Mr. Dreifus: Actually I don't believe it would, your Honor, except possibly on a question of intent it could become material, although I do not see yet how it could be material.

The Court: All right. I guess that is all then.

The Witness: Thank you.

Mr. Dreifus: I have no further questions.

(Witness excused.)

Mr. Weikert: I call Mr. Woodall. [47]

* * *

WILLIAM LUTHER WOODALL

called as a witness for defendants, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: William Luther Woodall.

The Clerk: Have that seat. [48]

Direct Examination

By Mr. Weikert:

Q. Where do you live, Mr. Woodall?

A. Lindsay.

Q. And are you connected with Lo Bue Brothers?

A. Yes, sir.

Q. What is your connection?

A. Sales manager.

Q. And how long have you been sales manager?

A. Some four years.

Q. In other words, you were sales——

A. More or less.

Q. ——manager at the time the shipments here in question were made? A. Yes.

Q. And you knew that these shipments were being made, did you not? A. Yes, sir.

Q. And did you know of the filing of the 15(A) petition? A. Yes, sir.

(Testimony of William Luther Woodall.)

Q. Did you know of the advice given to Mr. Lo Bue, to which he has testified? A. Yes, sir.

Q. By me? A. Yes, sir. [49]

Q. And did you also know that before any of these shipments were made Mr. Lo Bue had been notified by me that the 15(A) petition was filed?

Mr. Dreifus: I object to the question, your Honor, as leading.

The Court: They are leading. I will sustain the objection to the last question. I think it is leading; it may have been out of desire of counsel to save time. I will sustain the objection.

Mr. Weikert: I am trying to get through.

The Court: Yes. I will sustain the objection.

Q. (By Mr. Weikert): Did you talk to me on the extension telephone in Lindsay at the same time that I talked to Mr. Lo Bue, and told him that the 15(A) petition had been filed? A. Yes.

Mr. Dreifus: Your Honor, again, he is leading the witness. I agree he has to get the time and place, but he is putting too much in.

The Court: Well, the witness has answered the question. You may cross-examine him. The question has been answered; the answer may stand.

Mr. Weikert: You may cross-examine.

Mr. Dreifus: Your Honor, in view of the hour I can see it might take at least 20 or 25 minutes to cross-examine Mr. [50] Woodall. May I reserve my cross-examination?

The Court: In order to put on the other witness?

Mr. Dreifus: Yes.

(Testimony of William Luther Woodall.)

The Court: All right.

Mr. Weikert: There is certainly nothing to rebut.

The Court: I don't know; I never know until the questions are asked.

Mr. Weikert: At this point, if counsel is going to put on a witness to testify in rebuttal of something Mr. Woodall hasn't testified to, there is no foundation laid for it.

Mr. Dreifus: May I do this, your Honor? I believe counsel is correct. I would like to cover one particular subject with Mr. Woodall, rather than get into a long situation with him. After covering that, I would like to reserve the rest of my cross-examination.

The Court: Confine yourself initially then particularly to the matter upon which you wish to cross-examine the witness. Then when you have concluded that, I will permit you to put on your witness, and then resume the cross-examination of Mr. Woodall.

Cross-Examination

By Mr. Dreifus:

Q. Mr. Woodall, do you know what the Naval Orange Administrative Committee is?

A. Yes, sir. [51]

Q. Calling your attention to March, 1956, were you at that time the sales manager of Lo Bue?

A. Yes, sir.

Q. Representing Lo Bue, did you attend two

(Testimony of William Luther Woodall.)

meetings of the Navel Orange Administrative Committee in Los Angeles during March, 1956, particularly on March 15th and March——

A. Not representing Lo Bue, no.

Q. ——29, 1956?

The Court: I gather you were present at the meetings?

The Witness: Yes, sir.

The Court: Two meetings, but weren't there representing Lo Bue Brothers, is that it?

The Witness: That is right.

Q. (By Mr. Dreifus): If you weren't there representing Lo Bue Brothers, what was your business at these meetings?

A. I was there in the interest of my own acreage of citrus, that I own and control as a grower.

Q. Did you make any representations to this Committee on those two occasions that you were thus representing only your own acreage by your attendance at the Committee meeting?

A. I don't remember the words I said. However, I could only speak for myself, because I wasn't instructed by Lo Bue Brothers to make any statements.

Q. Prior to that time had you ever attended any [52] Committee meetings of the Navel Orange Administrative Committee? A. Yes.

Q. Had you attended committee meetings of committees involved with other commodities besides navel oranges, such as Valencia oranges and other types of fruit?

(Testimony of William Luther Woodall.)

Mr. Weikert: I object as immaterial, involving different committees and different orders.

Mr. Dreifus: May I modify the question slightly?

Q. Regarding fruit of the type handled by Lo Bue Brothers and shipped by Lo Bue Brothers?

Mr. Weikert: The same objection, your Honor, unless it is related to the Navel Orange Committee and the navel regulations I don't see that it has any bearing. Lo Bue Brothers might be shipping peaches.

The Court: Well, I am going to overrule the objection. Now, read the question so you understand it.

(Question read.)

A. I have attended various meetings in my lifetime.

Q. (By Mr. Dreifus): Now, have you ever attended any Navel Orange Administrative Committee meeting during all the time that you have been sales manager for Lo Bue Brothers, other than these two occasions, when you did not represent Lo Bue Brothers at such meeting? [53]

A. I never had any authority to represent Lo Bue Brothers at any prorate meetings.

Q. Did Lo Bue Brothers ever since you have known them or been connected with them send anybody to a prorate meeting of the Navel Orange Administrative Committee?

A. Well, I don't know what you mean by that.

(Testimony of William Luther Woodall.)

We pay a fee for a representative, a district representative.

Q. By represent, I mean have you or anyone else on behalf of Lo Bue Brothers attended any committee meeting in order to make any comments, make any statements, or just to see what was going on in the committee meeting?

The Court: Now, you are talking about this particular Navel Orange Committee?

Mr. Dreifus: Yes, your Honor.

The Court: What is the exact name of it?

Mr. Dreifus: Navel Orange Administrative Committee.

The Court: Will you read the question, and, Mr. Woodall, keep your voice up so we can all hear you.

(Question read.)

The Court: Why don't you first ask the witness if he has ever attended a meeting of this Navel Orange Advisory Committee, other than these two?

Q. (By Mr. Dreifus): Have you ever attended a Navel Orange Administrative Committee meeting, other than those two? [54]

A. Yes, many of them.

Q. And at those other meetings, did you represent solely yourself, your own acreage?

A. Yes, sir.

Q. At those other times, did you so advise the Committee, that you were representing only yourself and your own acreage?

A. I might have said my groves, but I never

(Testimony of William Luther Woodall.)

had no authority from Lo Bue Brothers to represent them and make any statement whatsoever in a committee meeting of Lo Bue Brothers, never did I have any advice or authority what to say or what to do at any meeting.

Q. Now, when you say your growers and your own acreages, does that include any acreage or growers who provided the oranges, the 26 loads of which were shipped on the 7th and 8th of April?

A. I had no right to make that statement, or I didn't mean them. I was only talking about myself, because all growers shipped their fruit through Lo Bue.

Mr. Dreifus: Would you please read the question back to the witness?

(Question read.)

A. It would include my own, my brothers', my sons' and my partnership.

Q. You didn't answer my question. Will you read it again? [55]

(Question reread.)

A. I said my own, my sons', and my partnership.

Q. What you just said, your own, your sons' and your partnership, were any part of those oranges in those that were shipped on the 7th and 8th of April? A. Some, yes.

Q. Now, coming back to the two meetings, let's take the first meeting first, the one on March 15th,

(Testimony of William Luther Woodall.)

1956, can you recall your participation in any discussion that was had at that meeting?

A. I don't remember what dates.

Q. I didn't hear your answer.

A. I don't remember what dates, whether it was March 15th, or April 15th, or when it was.

Q. You recall going to two meetings?

A. I recall going to two meetings.

Q. In March. During either of those two meetings did you participate in any discussion in the presence of the Navel Orange Administrative Committee? A. Yes.

Q. Can you recall what, if anything, you said in any such discussion?

A. I said I thought we was being dealt a very raw deal, our fruit being prorated ten weeks past the historical life of it, when Southern California was only going two weeks past [56] the historical life of their fruit, and I was going to see if there was a way that I could move my fruit, if there was any way possible I was going to ship my fruit.

Q. Is that all you said?

A. I can't remember two years back the exact words, but I know that was the meaning of the conversation.

Q. Did you have any other conversations with any member of the Navel Orange Administrative Committee, shortly before or after either one of these two meetings, any private conversation?

A. I don't remember.

Q. Did you have any private conversation with

(Testimony of William Luther Woodall.)

the manager of the Committee, shortly before or after either one of these two meetings?

A. I don't remember.

Q. Do you know who the manager of the Committee was then?

A. I guess Mr. Coogan was.

Q. Do you see Mr. Coogan here? A. Yes.

Q. Point him out.

A. Man on the left over there.

Q. You can't remember having a discussion with Mr. Coogan? A. Personally? [57]

Q. Yes, personal discussion between you and Mr. Coogan shortly before or after one of these two meetings?

A. I don't know, personally. Any discussion there was always a bunch of people around.

The Court: The question is whether you had a private meeting, at which I assume there were only you and Mr. Coogan present.

The Witness: No, no.

The Court: Is that what you meant, Mr. Dreifus?

Mr. Dreifus: I meant by private meeting, any meeting other than while the committee itself was in session, just before they went into the session, or just after the session broke up.

The Court: Oh, you mean informal, as distinguished from discussions that were formal at the meeting?

Mr. Dreifus: That is correct, your Honor.

The Court: All right.

(Testimony of William Luther Woodall.)

A. I had no private—anything that was discussed, people was standing around. We never was in a room to ourselves discussing a private conversation.

Q. (By Mr. Dreifus): Did you have a discussion with Mr. Coogan while someone else, one or more persons were standing around?

A. I don't remember. I probably did.

Q. You can't recall what it was? [58]

A. No, I can't.

Mr. Dreifus: That is all the cross-examination I have at this time, your Honor.

The Court: All right, you may step down.

(Witness temporarily excused.)

* * *

M. D. STREET

called as a witness by the government in rebuttal, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: M. D. Street.

The Clerk: Have that seat there. [59]

Direct Examination

By Mr. Dreifus:

Q. Mr. Street, what is your residence?

A. Los Angeles.

Q. And what is your occupation?

(Testimony of M. D. Street.)

A. I am treasurer of Sunkist Growers and a member of the Navel Orange Administrative Committee.

Q. Were you during March and April, 1956, a member of the Navel Orange Administrative Committee? A. I was.

Q. Were you present at the meeting held by the Navel Orange Administrative Committee on Thursday, March 15, and Thursday, March 29, 1956, in Los Angeles? A. Yes, I was.

Q. You heard Mr. William L. Woodall, the last witness, testify here in court today? A. Yes.

Q. Was he present at those two meetings?

A. Yes, he was.

Q. Calling your attention, sir, to the first of the two meetings, do you have a recollection as to any discussion which occurred at such meeting, in which Mr. Woodall participated? A. Yes, I do.

Q. In what capacity did Mr. Woodall attend these two meetings? [60]

Mr. Weikert: Objected to as calling for the conclusion of the witness.

The Court: I think so. I will sustain the objection. You can state what Mr. Woodall said, but I don't think you can ask this witness in what capacity, it calls for his opinion and conclusion. I will sustain the objection.

Mr. Dreifus: That was error, your Honor. What I would like the witness to state for us, was Mr. Woodall a member of the Committee, or was he a

(Testimony of M. D. Street.)

person of another status other than member of the Committee.

The Witness: Mr. Woodall was an observer. He certainly was not a member of the Committee.

Q. (By Mr. Dreifus): In other words, was it a practice that persons other than specifically members of the Committee could attend committee meetings?

A. Yes, it is an open meeting and as a general rule there are several observers.

The Court: In other words, your meetings are public meetings, and anybody that really had any reason to be there would be admitted?

The Witness: They are public meetings and all growers or anyone interested may attend.

The Court: You don't question the right of any person to come in there at all? [61]

The Witness: Anyone may attend, and may take part in the discussion, if they so wish.

The Court: All right.

Q. (By Mr. Dreifus): Now, coming directly to any discussions or transactions in which Mr. Woodall participated at the first meeting, can you recall anything at that meeting that was said by Mr. Woodall to the Committee?

A. Well, naturally I can't remember the exact words, but Mr. Woodall was—made it quite clear to the Committee that he disapproved of what the Committee was doing, the way in which they set the allotments, that as a result of the small, relatively small allotment set for Central California,

(Testimony of M. D. Street.)

the district Mr. Woodall was in, that great hardship was being caused on the operators, people in that district. I think he was speaking principally for himself. I don't know whether he was speaking for himself or Lo Bue Brothers, he didn't say, but he was extremely critical, I remember that very clearly, of the actions of the Committee, and he made it quite clear to the Committee, as he put it, he was getting a raw deal and he intended to move his fruit, to ship his fruit in one way or another, and he would find some way to do it.

Q. Now, by the words "his fruit" did you understand Mr. Woodall to mean fruit that was ready to be shipped as of those few weeks of that month, or did you understand that to [62] mean it could be fruit in the next year, 1957 and 1958?

Mr. Weikert: Objected to as calling for a conclusion.

The Court: Yes, I will sustain the objection. I think it is up to this Court to decide from the testimony what he meant. I will sustain the objection. I don't want to limit you, whatever the witness recollects as to what Mr. Woodall said will come in. Now, as to what he meant by it, or the effect of it, I think it is my responsibility as a Judge to determine that.

Q. (By Mr. Dreifus): Was there any further discussion between the Committee and Mr. Woodall on the first meeting, other than what you have already told us?

A. I don't believe there was any discussion on

(Testimony of M. D. Street.)

the part of the Committee at all. It was all observation from Mr. Woodall and perhaps other observers had observations.

Q. Now, on the second meeting on March 29th, 1956, Mr. Woodall was present at the second meeting?

A. Yes, he was.

Q. And was he also an observer at this second meeting, the same as the first?

A. Yes.

Q. At that second meeting, did Mr. Woodall participate in any discussion with the Committee?

A. I don't believe he participated in any discussion. [63] He had observations to make along the same line as I have already said. I don't recall it was very much different.

The Court: In other words, the Committee let these observers talk?

The Witness: Yes.

The Court: I see.

The Witness: It wasn't a question of any discussion back and forth. The chairman of the Committee, as a general practice, asks anyone in the room, goes around and asks each observer if they have any comments to make, so this is a full and free and open meeting where anybody can say anything they want, give their views and so forth, and that was the nature of the observations Mr. Woodall made, and I can't distinguish between the 15th and the 29th as to what was said, but things were getting tougher on the 29th and fruit was dropping on the ground and deterioration was taking place, and the Committee had great sympathy

(Testimony of M. D. Street.)

with everyone, but Mr. Woodall simply made his observations.

Q. (By Mr. Dreifus): Did you notice anything unusual or exceptional about Mr. Woodall's manner on the meeting on the day of the 29th?

Mr. Weikert: Objected to as calling for the conclusion of the witness. It's too bad we didn't have a motion picture.

The Court: Well, the witness can tell what he did, and [64] what he said, and any outward activity on the part of Mr. Woodall. I assume that Mr. Woodall was quite positive in his views.

The Witness: Your Honor, I could certainly say that. There was no uncertainty in the way he expressed himself about the situation and how he felt about what the Committee was doing, and he didn't like it.

The Court: Well, I don't know what counsel wants exactly, but did he talk in a very loud and excited voice? I don't know what you mean by manner.

Mr. Dreifus: That is what I was getting at, your Honor.

The Witness: I don't recollect whether he talked in a loud or excited voice, but he was certainly disturbed, made it very clear that he didn't like the way things were being done, and perhaps at times he did show some excitement.

Q. (By Mr. Dreifus): Other than the occasion on which Mr. Woodall made his observation during these two meetings, have you heard anything from

(Testimony of M. D. Street.)

him, or been in his presence while he has discussed this matter on any other occasion?

A. No, to my knowledge I haven't been with him, I haven't heard Mr. Woodall discuss it outside of the committee meetings where he made these observations. It was public information to the whole committee.

Mr. Dreifus: That is all, your Honor. [65]

Mr. Weikert: No questions.

The Court: That is all, Mr. Street.

(Witness excused.)

Mr. Dreifus: Mr. Dungan.

JACK M. DUNGAN

called as a witness by plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Jack M. Dungan.

The Clerk: Have that seat.

Direct Examination

By Mr. Dreifus:

Q. Would you state your residence?

A. Exeter, California.

Q. What is your occupation?

The Court: May I find out, I didn't get the pronunciation or spelling of your name?

The Witness: Dungan, D-u-n-g-a-n.

The Court: Thank you.

(Testimony of Jack M. Dungan.)

Q. (By Mr. Dreifus): What is your occupation?

A. I am a rancher, orange grower and grape grower, and member of the Navel Orange Administrative Committee.

Q. During March and April, 1956, were you a member of that Committee? [66]

A. I was.

Q. Did you attend the two meetings on March 15th and March 29th, 1956, that were held in Los Angeles, and about which Mr. Street has just finished testifying? A. I did attend, yes.

Q. And did you hear Mr. Street's testimony on the stand? A. Yes.

Q. Were you present during committee meetings on the same occasions and at the same times Mr. Street testified to? A. Yes.

Q. And did you hear Mr. Woodall make his observation and participate in the discussion on the same occasions? A. I did.

Q. Is your recollection of what transpired and what was said between Mr. Woodall and the Committee the same as what Mr. Street has just testified to? A. I think so, yes. Yes, it was.

Q. Do you have anything that you can recollect that is different from, or that you can add to what Mr. Street has already testified to?

A. One point is that when we sit as a committee and these observers come in we—handler members like Mr. Woodall is, I think in all cases the Com-

(Testimony of Jack M. Dungan.)

mittee presumes they are representing the organization, rather than themselves. [67]

Mr. Weikert: Now, just a moment. I move to strike that answer as containing quite a number of conclusions, namely, he said Mr. Woodall was a handler member. There is no evidence he is a handler or a member of anything, and what the Committee assumes is certainly not binding.

The Court: Well, I think I will strike the answer of the witness as not responsive. Let's read the question. Now, what we are interested in, Mr. Dungan, is what Mr. Woodall said and what he did, and if you want to describe his actions or manner, you may do so, on those two meetings. Now, any inferences or any presumptions that the Committee had, of course, can't properly come before me. I have got to draw my inferences from the testimony produced here, you see? So if there is anything that Mr. Woodall said that Mr. Street didn't testify to, or anything about his manner, or his actions, you certainly will be permitted to testify.

The Witness: Well, I think Mr. Street has covered it all, sir. Mr. Woodall was very emphatic.

The Court: He didn't like what the Committee was doing and he expressed himself?

The Witness: That is right, sir.

Q. (By Mr. Dreifus): How long have you been a member of the Navel Orange Administrative Committee?

A. Five years. This is finishing out my fifth

(Testimony of Jack M. Dungan.)

year. [68] Since it has been reinstated I have been a member ever since.

Q. In your experience, has there been any definite practice established, or has any practice prevailed during your five years on the Committee, concerning—within the orange industry—whether persons who appear as observers customarily appear on their own behalf or in behalf of those handlers who employ them?

Mr. Weikert: That is objected to as calling for a conclusion of the witness.

The Court: Yes, I am going to sustain the objection to the question.

Mr. Dreifus: I have no further questions.

Mr. Weikert: No questions.

The Court: That is all.

(Witness excused.)

Mr. Dreifus: Mr. Coogan is my last witness of these three.

The Court: All right.

MICHAEL COOGAN

called as a witness by the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Michael Coogan.

The Clerk: Have that seat. [69]

(Testimony of Michael Coogan.)

Direct Examination

By Mr. Dreifus:

Q. Mr. Coogan, you have heard the testimony of Mr. Street and Mr. Dungan today?

A. Yes, I have.

Q. What is your occupation?

A. Manager of the Navel Orange Administrative Committee.

Q. And where is your residence?

A. Los Angeles, California.

Q. How long have you been manager of that Committee? A. Since May, 1934.

Q. Now, you attended the two meetings we referred to, in March, 1956? A. Yes.

Q. And you heard everything that went on there? A. Yes.

Q. Can you tell us whether it is your recollection that what Mr. Street and Mr. Dungan have already testified to correctly states what transpired at those two meetings?

A. In context they do. For myself, I don't remember the exact words, but they state it.

Q. As to the two meetings themselves and matters which occurred in the open meetings, do you have anything to add to what Mr. Street and Mr. Dungan have already testified to?

A. Well, I had a conversation with Mr. Woodall after [70] the meeting of March 29th.

Q. It was within the two meetings?

(Testimony of Michael Coogan.)

A. No, it was not within the meeting; I think they have covered that.

Q. Now, did you have a conversation with Mr. Woodall before or after any formal session of those two meetings?

A. I had a conversation with him after the meeting of March 29th. I listened to Mr. Woodall's testimony. It wasn't a private conversation in another room, but after the meeting was over and everybody gathered around, I was talking directly to him and he was talking directly to me, and I don't know whether anybody heard us or not.

Q. Can you state the substance of that conversation?

A. Well, the substance was that Mr. Woodall said that he had a plan whereby he was going to ship his fruit, and I told him as manager he must understand it was my job to catch him if he shipped in excess of the allotment, and he said, "Well, I ain't going to tell you what I am going to do." And I said "Naturally." And he laughed and I laughed, and that was about the conversation.

Q. You said you had been manager since 1934?

A. I did that at the hearing, too. I started to work for the government in May, 1934, and I started to work for the Orange Administrative Committee in May, 1954.

Mr. Dreifus: Thank you. That will be all. [71]

Mr. Weikert: No questions.

The Court: Mr. Coogan, are you the presiding Officer?

(Testimony of Michael Coogan.)

The Witness: No, as manager I am acting secretary, and I prepare the agenda for the chairman.

The Court: And the chairman is chosen from among the members of the Committee?

The Witness: No—yes, the chairman is chosen among the members of the Committee. The chairman usually, has been on the Committee since 1934 a neutral, as we call it, he has no citrus interests and he is appointed by the Secretary of Agriculture.

The Court: I see.

The Witness: And our chairman of the Navel Committee happens to be Ken Smoyer, the farm adviser for Los Angeles County.

The Court: Let me ask you another question: Has it been the practice to make notes, minutes of what these observers say at the meetings?

The Witness: No, sir, not in general. Years ago we used to make verbatim, but even on the committee they don't make notes unless committee action is taken.

The Court: I see.

The Witness: Except the fact it is recorded officially that he is an observer and is present.

The Court: I see. And generally does that simply record [72] his name and where he is from?

The Witness: Just records his name.

The Court: Yes. Thank you. Any further questions?

Mr. Weikert: No, sir. [73]

March 12, 1958—10:00 A.M.

The Court: Are we ready in the Lo Bue case?

WILLIAM LUTHER WOODALL

a witness for defendants, resumed the stand, having been previously duly sworn, and was examined and testified further as follows:

Cross-Examination
(Continued)

Mr. Dreifus: Further cross-examination of Mr. Woodall.

Q. Now, Mr. Woodall, on the same day that you attended the Navel Orange Administrative Committee meeting on March 29, 1956, after that meeting you went to Mr. Weikert's office in Los Angeles, did you not? A. I don't remember.

Q. Did you see Mr. Weikert in his office during the month of March, 1956?

A. I don't remember whether it was March or April. I can't recall the exact date.

Q. Prior to the filing of the 15(A) petition, did you see Mr. Wickert in his office, during either March or April, 1956? A. Yes, sir.

Q. How many trips to Los Angeles did you take during March or April, 1956, during which you saw Mr. Weikert?

A. You ask me how many times I saw Mr. [74] Weikert?

Q. During March or April, 1956.

A. Once is the best I remember, one time.

(Testimony of William Luther Woodall.)

Q. In his office? A. Yes.

Q. Was that on the same day that Mr. Mario Lo Bue signed the 15(A) petition?

A. No, it was prior to that.

Q. Did you see Mr. Weikert on the same day on which you attended the Navel Orange Administrative Committee meeting?

A. I don't remember.

Q. Other than the time you spent in Mr. Weikert's office during March or April, 1956, did you speak to Mr. Weikert on the phone?

A. What time are you talking about?

Q. Did you on any occasion during March or April, 1956, speak to Mr. Weikert on the telephone?

A. Yes.

Q. Where were you at the time you had the phone conversation?

A. Lo Bue Packing House.

Q. At Lindsay? A. Yes.

Q. The one time you visited Mr. Weikert in his office, did you stay in his office all day long?

A. No. [75]

Q. Did you stay in his office four hours of the day?

A. I don't remember the hours or minutes.

Q. Were you there as little as one hour?

A. I don't remember the length of time I was in Mr. Weikert's office.

Q. Did you, while you were in Mr. Weikert's office on this occasion, have any discussion with Mr. Weikert? A. Yes.

(Testimony of William Luther Woodall.)

Q. You talked to him and he talked to you?

A. Yes.

Q. What did you tell him?

A. I didn't tell Mr. Weikert anything, I went to Mr. Weikert for advice.

Q. Did you say any words at all of any kind to Mr. Weikert while you were in his office?

A. Why I talked to Mr. Weikert, yes.

Q. What did you say?

A. Well, it is hard to remember the words I said. I can't tell you the words I said, a conversation that happened two years ago.

Q. Can you remember the substance of what you said?

A. The substance of the conversation was, is there any way, legal right that we can move oranges. We felt our rights was being infringed; they prorated the oranges way past any other year, of the historical life of navel oranges in Tulare [76] County, they were deteriorating very badly, bringing a dollar a box under Southern California oranges, and that was along those lines, the condition of our fruit, and if there was any way we could get relief.

Q. And this is all that you informed Mr. Weikert? A. Informed him?

Q. Well, this is all you told him at the time, in substance?

A. I can't remember every word of the conversation.

(Testimony of William Luther Woodall.)

Q. Now, you mentioned Tulare County navel oranges, and the season being extended. By Tulare County you actually mean Central California navel oranges, don't you?

A. Yes, Tulare County is most of Central California, in Tulare County.

Q. Now, the petition that was later filed, as you understand it—withdraw that question. You understand that the petition that was filed by Lo Bue Brothers briefly sets out that Central California is being discriminated against because the season was made too long? Is that what you understand? Is that a correct statement of what you understood the petition to be about at the time?

A. Ask that question again.

The Court: Read the question.

(Question read.)

A. I don't understand what words—I don't know what [77] words was in the petition.

Q. (By Mr. Dreifus): Well, in substance did you understand that the petition recited in legal words what you told Mr. Weikert was wrong?

A. I only went to Mr. Weikert for advice. As far as the petition, I didn't even read the petition. I don't know what the petition said.

Q. And when you went to see Mr. Weikert for advice you were looking for a way to ship the oranges, weren't you?

A. I was seeing if there was any legal way.

Q. Well, you wanted to ship. We will assume you

(Testimony of William Luther Woodall.)

wanted a legal way, but you wanted to find some way to ship the oranges, did you not?

A. Yes.

Q. Now, during this conference with Mr. Weikert in his office, what were you told by Mr. Weikert in answer to your telling him all of these things?

A. Mr. Weikert advised us that the only way legally it could be done was by filing a 15(A).

Q. Did he advise you that as soon as the 15(A) petition was filed you could start immediately shipping oranges?

A. Yes.

Q. Did he advise you that a 15(A) petition had to be filed in good faith and not for purpose of delay if it was to [78] be effective?

A. I don't remember all the words he told us.

Q. You don't remember him telling you whether or not the 15(A) petition has to be in good faith and not for the purpose of delay?

A. I cannot—the substance of the conversation is the only thing I can remember, and he advised me by filing a 15(A) is the only way we could get relief, was by filing a 15(A).

Q. At the time you had this discussion with Mr. Weikert did you understand that in order the 15(A) petition could be valid, so you could lawfully ship your oranges, that 15(A) petition had to be in good faith and not for the purpose of delay?

A. When I go to an attorney I go for advice and I do as he says. I am not an attorney; I don't know the laws.

Q. Do you personally, or did you personally at

(Testimony of William Luther Woodall.)

that time understand the meaning of the words "good faith"?

A. I don't remember if good faith was even mentioned.

Q. Now, before going down to consult with Mr. Weikert, whose idea was it to go see him, yours or Mr. Mario Lo Bue's, or somebody else's?

A. Well, we had all been talking this over what we thought it was—we thought our constitutional rights was being infringed on by the prorate board due, as I say, to [79] extending our prorate ten weeks past the historical life and the Southern California setup was two weeks past the historical life of their fruit, and the historical life is arrived at at the time all fruit has been shipped in the district, so we were all very bitter that that was being done to us and we were taking great losses. Every two weeks, we was running pools every two weeks and our by-product still was doubling practically every pool, in percentage.

Q. Whose decision was it for you to go to see Mr. Weikert?

A. It was a decision that was arrived by Mr. Lo Bue and I.

Q. What pool do you speak of? Explain what you mean by pool?

A. Well, pool is when you run a certain length of time, the pool—all the growers that pick in that pool is paid the same price for size and grade.

Q. By pool, now just who makes up a pool? Are they growers, handlers, or what?

(Testimony of William Luther Woodall.)

A. Made up by your growers.

Q. Your pool that you speak of here, did any of those people ship any oranges through Lo Bue Brothers Packing House during March, 1956?

A. Yes.

Q. Well, then some of the oranges that were in the 26 [80] carloads that were shipped over the 7th and 8th of April, 1956, came out of that very pool, did they not? A. Out of what pool?

Q. The pool you just spoke about, your pool?

A. I didn't say I had a pool, the packing house has a pool.

Q. Well, the packing house pool, didn't they?

Mr. Weikert: Would you read that question?

(Question read.)

A. Some of whose oranges?

(Question reread.)

Mr. Weikert: If the Court please, I don't believe the witness understands the question. I don't quite understand it myself. I don't know whether counsel understands how a pool operates. They are not just lying around loose, they come out of——

Mr. Dreifus: Your Honor, that is one of the difficulties. I am trying to get into the record just what we mean by the word "pool."

The Court: Let's ask the witness what he means by the word "pool" as used in connection with this marketing order on navel oranges.

Q. (By Mr. Dreifus): As you used the word

(Testimony of William Luther Woodall.)

“pool” in your last several answers, what do you mean by the word “pool”? [81]

A. Well, a pool is where you go out and pick oranges, you run it sometimes two weeks, sometimes 30 days, some people run them a whole season. This year we were running two-week pools and there is a bunch of growers in that pool, some 15 or 18, I don't remember exactly, and they get a pack out, and their fruit as soon as it is run loses its identity, what cars it is in we don't know. He gets so many fancy this size, so many choice this size, so much by-product, and so forth, different grades, so that money is all—comes in and whatever the average of that size or that grade is paid during that pool, that is what the grower gets.

Q. Now, when you said “we run a pool” you mean Lo Bue Packing House runs a pool?

A. Yes, they run pools, and all packing houses run pools.

Q. So the pool you are speaking of here is Lo Bue Packing House pool, is that right?

A. Yes.

Q. And when you say the money comes into the pool, you mean the money comes into Lo Bue Packing House, to go to members of the pool?

A. Yes.

The Court: Let me ask you, is there a two-weeks period in which the oranges are gathered from the growers, and then after the two-week period the oranges that have been thus [82] gathered are shipped, or is there a constant shipment during

(Testimony of William Luther Woodall.)

that two-week period of the oranges, as they come in from the various growers?

The Witness: Well, you start—your pool is from the picking date to the end, and you are shipping all the time in the pool, from the day you start to pick and pack; in fact, you don't start to ship until you start to pack, but from the day you start that pool and start picking and packing, why, that is the starting of the pool, and then like you have 10,000 cartons of one—26s, and you take that average and that is what the growers is paid for that many size of fancy that he has.

The Court: Well, do you determine in advance that during a given two-week period there will be "X" number of cartons of oranges shipped?

The Witness: Well, yes. There will be whatever was picked in that pool shipped, or put in storage.

Q. (By Mr. Dreifus): Now, Mr. Woodall, coming back to the subject we were on, you said the pool decided that you would go to Los Angeles and see Mr. Weikert on the occasion that you went down there to see him, is that right?

The Court: Well, I think my record shows that he said that he and Mr. Lo Bue talked it over.

Mr. Dreifus: I am sorry; I withdraw the question. [83]

The Court: That is my understanding of his testimony. Is that right?

The Witness: That is right.

Q. (By Mr. Dreifus): You and Mario Lo Bue talked it over, your decision to go to Los Angeles to

(Testimony of William Luther Woodall.)

see Mr. Weikert? A. Yes.

Q. Which one of you two first suggested in that conversation that you were going to Los Angeles to see Mr. Weikert?

A. I believe Mr. Lo Bue went with me. I am not sure, but I believe he did. I am not definitely sure about it.

Mr. Dreifus: Repeat the question.

(Question read.)

A. Oh, I don't remember.

Q. Did Mr. Mario Lo Bue order you to go to Los Angeles to see Mr. Weikert?

A. I don't know whether he went with me or not. He didn't order me. It was just a general understanding if I did go, but I think Mr. Lo Bue went with me. I am not sure.

Q. In running the Lo Bue Packing House at this time, and prior to this time, was it customary for Mr. Mario Lo Bue to order you to go see an attorney about the affairs of Lo Bue Packing House?

A. I never make any decisions for Lo Bue Packing Company. I never act for Lo Bue Packing Company unless I have [84] instructions from Mr. Lo Bue, Mario Lo Bue. Does that answer your question?

Q. You are the sales manager of Lo Bue Brothers, are you not? A. Yes.

Q. How long have you been the sales manager?

A. Oh, some four years, more or less.

(Testimony of William Luther Woodall.)

Q. As sales manager at the time in question, which is March and April, 1956, you were engaged to sell the oranges to be packed and shipped by Lo Bue Brothers, were you not? A. Yes.

Q. By selling, that means you have authority to go and make agreements to sell with the various customers, is that correct?

A. Well, I either turn them over to A. Arena & Company, or sell them myself there at the packing house.

Q. By selling them yourself, you mean you sell them to ultimate customers?

A. Yes, customers that we have.

Q. Could you name some typical customers that you were selling to at the time?

A. Name some customers?

Q. Yes.

A. Well, Safeway Stores; Sam Perricone in Los Angeles, that is our main outlet for the local business. [85]

Q. Now you have been employed always as a full time employee of Lo Bue Brothers, have you not?

A. When we are packing I am always there.

Q. By full time, does Lo Bue pay you for 40 hours a week whether the 40 hours are spent in the packing house or in Los Angeles, or elsewhere on Lo Bue's business?

Mr. Weikert: Objected to as immaterial.

The Court: Well, I don't think that particular question is material. I will sustain the objection.

(Testimony of William Luther Woodall.)

Q. (By Mr. Dreifus): Would you describe what your general duties were during March and April of 1956, as sales manager of Lo Bue Brothers?

A. I just described them. I—what fruit I can't sell f.o.b. here I turn over to A. Arena & Company to sell.

Q. Do you have authority to make sales of oranges without consulting Mr. Mario Lo Bue on each individual sale? A. Yes.

Q. You have authority to negotiate prices then, do you not? A. On oranges?

Q. Yes. A. Yes, sir.

The Court: Do you engage in any other activities besides your duties as sales manager for Lo Bue Brothers? [86]

The Witness: Well, I help check the grades and see we are putting out—

The Court: No, aside from anything you do for Lo Bue Brothers, do you engage in any other activity?

The Witness: Other than sell fruit?

The Court: Yes.

The Witness: I contact growers.

The Court: No, any activities other than the Lo Bue Brothers. In other words, do you carry on a real estate business?

The Witness: Oh, no, sir.

The Court: Carry on a farming business? What do you do?

The Witness: Nothing but the packing house

(Testimony of William Luther Woodall.)

business, and I have no financial dealings of any kind.

The Court: No, but as I understand you have an orange grove of your own?

The Witness: Yes, sir.

The Court: Do you devote any time to the orange grove?

The Witness: Oh, yes.

The Court: Well, do you do any other activity separate and apart, or in addition to the activities that you are engaged in for Lo Bue Brothers?

The Witness: Well, I have my own ranches, my partnership ranches that I look after. That is about all.

The Court: All right. [87]

Q. (By Mr. Dreifus): The Lo Bue packing house pool that you described before, did you at the time in question here have anything to do with the running of that pool, or the managing of the growers in it?

A. Well, we just picked all of our fruit that we had left in that pool.

Q. Well, did you have anything to do with the picking of the fruit by the members of the pool?

A. I don't know how to answer that.

The Court: Do you, among your duties, contact the growers for any purpose?

The Witness: Well, it was understood that all the growers we had left would get in the last pool.

The Court: Well——

The Witness: Sometimes I talked with them, and

(Testimony of William Luther Woodall.)

said "We will pick some of your crop tomorrow" or two days or four days later.

The Court: All right.

Q. (By Mr. Dreifus): If you can recall, what was the salary or income you received from Lo Bue Brothers in March, 1956?

Mr. Weikert: That is objected to as wholly immaterial.

The Court: I don't see that it is material. It is my understanding from this witness' testimony that he devotes [88] all of his time that is required to carry on his activities with Lo Bue Brothers, and then apparently he is free to do what work he might do in connection with his own orange groves, or those in which he has a partnership interest. In other words, I take it he is a full time, so-called full time employee of Lo Bue Brothers, and as the work requires it he works every day and all day long, other days there may be nothing to do he might do something about his ranches.

The Witness: That is right.

The Court: But the Lo Bue Brother work has preference, is that right?

The Witness: Yes.

Mr. Dreifus: Your Honor, my question was directed at this: Mr. Woodall is attempting to minimize his role in this whole thing. However, I will withdraw the question.

The Court: I don't see, as long as the indication is the witness is a full time employee in the sense

(Testimony of William Luther Woodall.)

in which I have used the term, whether he is overpaid or underpaid would be material.

Mr. Dreifus: I will withdraw the question, your Honor.

Q. Mr. Woodall, how old are you?

A. I will be 50 September.

Q. How long have you been connected by any employment or any capacity with the orange business, growing or handling?

A. Growing and handling, managing packing houses, '28 [89] or '32 I started managing packing houses. I don't remember exactly.

Q. In other words, would it be fair to say at least something more than 25 years? A. Yes.

Q. Prior to being employed by Lo Bue Brothers, immediately prior thereto, were you employed or were you in any way connected with the orange business? A. Yes, sir.

Q. With whom or for whom were you so connected?

A. Before I went with Lo Bue I was with Paramount Citrus.

Q. What was your capacity there?

A. District manager.

Q. And how long were you with Paramount Citrus? A. One year.

Q. Prior to that time were you connected with the orange business in any way?

A. Yes, sir, Independent Growers at Lindsay.

Q. What was your capacity with Independent Growers? A. I was managing.

(Testimony of William Luther Woodall.)

Q. And how long were you with them?

A. Well, I don't know whether it was three or four years.

Q. And prior to that time were you connected with the orange business?

A. Well, five years prior to that I wasn't in the orange [90] business at all.

Q. Well, going back even further, were you in the orange business? A. Yes.

Q. With whom?

A. Well, I was district manager for Western Fruit Growers in Redlands from '48 to '43 or '44.

Q. Now, after the fruit was shipped on the 7th and 8th of April, 1956—withdraw that. After the conference with Mr. Weikert in his office, did you have a telephone conversation with Mr. Weikert?

A. Yes.

Q. Can you recall whether that was on a day prior to the dates of the shipments of the oranges in question here? A. Yes.

Q. Can you recall the date on which that telephone conversation occurred?

A. Well, I don't know just the exact date, but I know it was before the fruit was shipped.

Q. Was it on Friday, the 6th of April, 1956?

A. I don't know the exact date, I told you.

Q. In that telephone conversation, did you call Mr. Weikert, or did Mr. Weikert call you?

A. I don't—he didn't call me, I am quite sure. If he called anybody it was Mr. Lo Bue, and we both talked on [91] the same phone. We both came

(Testimony of William Luther Woodall.)

on the same phone, we have extensions on the phone. We were both talking to him.

Q. Can you recall the substance of the conversation you heard in that telephone conversation between, Mr. Lo Bue and Mr. Weikert?

A. Not word for word I can't.

Q. Can you recall the substance of what was said?

A. That the 15(A) had been filed, and we was at liberty to ship oranges.

Q. You were at liberty to ship oranges, and was any specific date or time mentioned as to when you would be at liberty to ship oranges?

A. The next day, I believe. It might have been two days. We was advised we could ship, I don't remember exactly what hour or day he said.

Q. Well, did you begin shipping on the day that was referred to in the conversation, whatever day it might have been?

A. We began shipping the day Mr. Weikert advised us we could ship.

Q. Was that all the substance of the conversation? A. Yes, that I can remember.

Q. Was anything said in the conversation as to whether or not there might be a court order to stop you from shipping oranges?

A. Yes, he said we could ship until there was a court [92] order restraining us from shipping.

Q. Were you told to expect the court order within a few days?

A. I don't remember the words, word for word,

(Testimony of William Luther Woodall.)

the substance of the conversation was we could ship oranges until a court order was issued and for us not to ship any more oranges after the court order was received.

Mr. Dreifus: Repeat the question.

(Question read.)

The Court: Then read the answer, too.

(Answer read.)

The Witness: That was the meaning of the conversation.

The Court: Does that answer your question?

Mr. Dreifus: I will reframe the question.

Q. Were you told that it was probable or likely, or words to that effect, that a court order would be quickly issued and served on you?

A. I can't remember the exact words. I can only testify to the substance of the conversation.

Q. At the time you had this conversation, and at the time the oranges were shipped on Saturday the 7th and Sunday the 8th, did you expect in your own mind to receive a court order on Saturday or Sunday?

A. I had—I didn't know when the court order—I had no way of telling. [93]

Q. Did you, or did you not, expect on that Saturday or Sunday, while you were shipping the oranges, to receive a court order, during those two days?

Mr. Weikert: If the Court please, the witness

(Testimony of William Luther Woodall.)

said that he had no means of knowing. I believe the question has been asked and answered.

Mr. Dreifus: I am asking for his state of mind, your Honor.

The Court: Well, hasn't he given it? He said that he was advised they could start shipping, that if there was a court order they would have to stop shipping.

Mr. Dreifus: Perhaps I can rephrase the question. I will withdraw the question and rephrase it.

Q. Did you on that week end, of the 7th and 8th of April, 1956, expect to receive a court order prior to Monday, the 9th?

A. I can't think of all of the things that ran through my mind those days. I was just doing what our attorney told us to do, and I don't remember what I thought.

* * *

Q. (By Mr. Dreifus): Sometime later, after the shipment of oranges took place, you attended an administrative hearing on the 15(A) petition in Los Angeles, did you not? [94]

A. Yes, sir.

Mr. Dreifus: We will stipulate, your Honor, that that hearing occurred on June 14, 1956.

Mr. Weikert: I think it is in the stipulation of facts. Anyway, that is correct.

Mr. Dreifus: Yes.

Q. Assuming the date of that hearing to be June 14, 1956, as was stipulated to, did you between the

(Testimony of William Luther Woodall.)

time you spoke to Mr. Weikert in the telephone conversation prior to the shipment of the oranges see or speak to Mr. Weikert from the time of that telephone conversation to the date of the administrative hearing?

Mr. Weikert: I object to that as immaterial, if the Court please. This is something after the fact which are here before the Court. It is immaterial since it deals with something that did or did not take place after the facts which are the subject matter of this case. If counsel will state what he has in mind, perhaps the materiality will appear, but as of now I object to it as immaterial.

Mr. Dreifus: This question and the subject, your Honor, is addressed to the extent of preparation made by this witness, and others with him, for the 15(A) hearing. It is after the fact of the shipment of the oranges, but I believe it is a part of the whole picture, in showing what these persons had in mind as to just how important they felt the [95] petition was on the merits.

The Court: I will overrule the objection. The question is, before this hearing on June 14th, and after the shipment of the oranges, did you talk to Mr. Weikert about this general subject?

The Witness: I don't remember.

Q. (By Mr. Dreifus): Did you at any time prior to the hearing on June 14, 1956, and after the telephone conversation, see Mr. Weikert in his office in Los Angeles?

(Testimony of William Luther Woodall.)

Mr. Weikert: Objected to as immaterial. Counsel apparently is trying to show that I didn't make proper preparation for the 15(A) petition hearing, at which counsel was not present. Mr. Griffin was my opposing counsel at that time, and as I recall we spent a full day in hearing, and after that exceptions and briefs were filed in the ordinary course of events. I just don't see the materiality of it.

The Court: I am going to overrule the objection. Read the question, Miss Schulke.

(Question read.)

A. Well, I—I don't remember. I saw him before we went down to the hearing that morning, the day of the 14th, or whenever the hearing was, but I don't remember seeing Mr. Weikert.

Q. (By Mr. Dreifus): Now, the hearing lasted one day, did it not? [96] A. Yes, sir.

Q. So other than seeing him the very same morning the hearing started you cannot remember seeing Mr. Weikert during the period we mentioned?

A. Between the time the fruit was shipped and the time of the hearing?

Q. Correct. A. I don't remember.

Q. Did you in any manner during that period, between the shipment of the fruit and the time of the hearing, communicate with Mr. Weikert, by letter for example?

A. I don't think I ever wrote Mr. Weikert a letter.

(Testimony of William Luther Woodall.)

Q. You yourself testified at that administrative hearing, did you not? A. Yes.

Q. Mr. Mario Lo Bue also testified?

A. Yes.

Q. You and Mr. Mario Lo Bue were present at that administrative hearing together?

A. Yes.

Q. Did you provide Mr. Weikert with the names of any other witnesses in your behalf from Central California to testify at that hearing?

Mr. Weikert: That is objected to as immaterial, and assuming that there is something not in evidence, namely that there were other witnesses. [97]

The Court: I don't know exactly what counsel has in mind, unless it could be that after the filing of the petition and after the shipment of the oranges, this witness really had no further interest in the matter, and that the hearing from their standpoint was just a pro forma hearing, and that might reflect on whether there was good faith at the time of the filing of the petition.

Mr. Dreifus: That is our purpose, your Honor.

The Court: I see. Well, I will overrule the objection. Do you recall whether you furnished Mr. Weikert the names of any witnesses to appear at the hearing?

The Witness: I don't remember. I only did things my counsel told me to do, instructed me to do.

Mr. Weikert: I didn't hear the answer.

The Witness: I said I only did those things our counsel instructed us to do.

(Testimony of William Luther Woodall.)

Q. (By Mr. Dreifus): Prior to the hearing did you furnish Mr. Weikert with any evidence of any other kind, such as any documents or papers, which would be in your behalf?

Mr. Weikert: If the Court please, I object to this upon the ground it is not the best evidence. If counsel wishes to introduce in evidence the transcript of hearing on the 15(A) petition, together with exhibits introduced by all witnesses, I will have no objection to his doing so. [98]

Mr. Dreifus: Your Honor——

The Court: I will overrule the objection on the theory that I have heretofore mentioned.

Mr. Dreifus: Read the question.

(Question read.)

The Court: In other words, did you assist Mr. Weikert in preparation for the hearing by giving him information or furnishing documents, or names of witnesses?

A. I can't remember. I know I asked him what we should do, and we did what he told us to do. That is the only thing I know, your Honor. That is the only way I know how to answer the question, because I can't remember. I don't remember that far back. I talked to him about our deterioration and how much our elimination was increasing every two weeks, and I did whatever he said or suggested—or asked me anything I could do, that I know, but I don't know—can't remember exactly what was said or done.

(Testimony of William Luther Woodall.)

Q. (By Mr. Dreifus): At that hearing, or in any conversation with Mr. Weikert prior to the hearing, did Mr. Weikert inform you that you had a right to appeal an administrative decision to the District Court?

A. I don't remember. [99]

* * *

Q. (By Mr. Dreifus): Did you find out later that the judicial officer of the Department of Agriculture decided against your 15(A) petition?

A. Mr. Weikert——

Q. The Lo Bue 15(A) petition?

A. Mr. Weikert informed me.

Q. Now, going back to the conversations that you had with Mr. Weikert, both in his office and over the telephone, and also at the administrative hearing, did Mr. Weikert ever tell you what the chances were that you would get a favorable decision on your petition from the administrative hearing officer of the Department of Agriculture?

Mr. Weikert: If the Court please, I object to that question as calling for the conclusion of the witness. I certainly was not equipped with a crystal ball.

The Court: I think I will sustain the objection to that question. [100]

Q. (By Mr. Dreifus): Now, in your telephone conversation with Mr. Weikert, when he told you the petition was on file and that as of a certain date and hour you could begin shipping oranges,

(Testimony of William Luther Woodall.)

did Mr. Weikert tell you by what means he was so sure the petition was on file?

A. He told me he had mailed it and it was on file.

Q. He didn't tell you whether or not he had made a telephone call to the hearing clerk to see whether the petition had been received?

A. No, he didn't tell me that.

Mr. Dreifus: That is all, your Honor.

Mr. Weikert: That is all.

The Court: That is all.

(Witness excused.)

Mr. Weikert: With the Court's permission, I would like to testify for the defendants.

Mr. Dreifus: No objection, your Honor.

G. V. WEIKERT

a witness for the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination

The Witness: My name is G. V. Weikert. I am an attorney at law, licensed to practice in all the courts of the State of California, and have been practicing in Los Angeles since [101] 1926. I am also the attorney of record for the defendants in this action.

I was consulted some time during the month of March by Mr. Woodall, in my office in Los Angeles, as sales manager of Lo Bue Brothers of

(Testimony of G. V. Weikert.)

Lindsay. And Mr. Woodall told me at that time that Lo Bue Brothers had a problem with the navel oranges which it was handling for its growers, in that the normal shipping season for navel oranges in Central California ends around April 1st, and the Navel Orange Administrative Committee was proposing to restrict shipments for approximately ten weeks beyond that period and that the fruit was deteriorating and dropping, and would continue to deteriorate and drop to such an extent that it would become practically worthless, and that at the same time the Navel Orange Administrative Committee was proposing to restrict shipments of Southern California navel oranges no more than two weeks beyond their historical life.

Mr. Woodall also told me that this action was being taken by the Navel Orange Administrative Committee while Central California had only one representative on the Committee, all the rest being Southern California representatives, and he felt that there was discrimination against Central California. He asked me what could be done about it, if anything.

I told him that on his statement it appeared to me that [102] there was grave doubt as to the legality of the Committee's action, and that the only thing that could be done was to follow the administrative procedure outlined by the Act, which consisted of filing what was known as a 15(A) petition with the Secretary of Agriculture, on which

(Testimony of G. V. Weikert.)

a hearing would ultimately be held and a decision eventually be made.

Mr. Woodall said that he didn't see that that would do much good because by the time there was a decision it would be long past the season anyway and all the damage would have been incurred.

I informed Mr. Woodall that the statute makes provision for relief under these circumstances. I told him that the statute provides that where a 15(A) petition is filed in good faith the order or allotment complained of is in effect suspended until there is a decision on the petition, and that the petitioner is exempted from penalties prescribed by the Act.

I also told him that in the only cases that I knew of, which were two cases decided in this court in 1944 and which had never been appealed and had become final, the immunity provided by the statute had been construed to extend to civil penalties as well as criminal penalties, and that once a 15(A) petition was filed in good faith, the petitioner was free to disregard allotments unless and until he was enjoined from further shipment. [103]

Mr. Woodall said that he would go back to Lindsay, discuss the matter with Mr. Mario Lo Bue, and I would hear from them later.

I did hear from them later. Mr. Mario Lo Bue telephoned me from Lindsay, and Mr. Woodall was on the extension in Lindsay, and they told me to go ahead and present a 15(A) petition along the lines we had discussed.

(Testimony of G. V. Weikert.)

After I had prepared the petition, I telephoned Mr. Lo Bue at Lindsay and told him it was ready. He came down, read it, signed it, and verified it in my office, and went back to Lindsay.

I mailed it that day to Washington, airmail at the—airmail registered, and late the next day I telephoned Mr. Lo Bue at Lindsay, with Mr. Woodall on the extension at Lindsay, and told them both that by now the petition would be on file with the Secretary of Agriculture, and if they had fruit to ship in excess of their allotment they could begin the next day to make such shipments and could continue unless and until they received an injunction or restraining order stopping them.

I would like to state further that I have had frequent communications over the years with departments and agencies of the federal government in Washington, and also with many individuals in Washington, D.C., and it has been my experience that airmail deposited in the mail at Los Angeles one day is delivered invariably in Washington to the addressee the next [104] day.

I have no knowledge as to the manner in which mail for the Department of Agriculture is handled in Washington. I have no knowledge of any alleged practice of holding mail for the Department of Agriculture received on a Friday after 2:00 p.m. until the following Monday. I have no knowledge that the entire Department of Agriculture is closed all day Saturday.

I would like to state further that over the years

(Testimony of G. V. Weikert.)

I have prepared and filed quite a number of 15(A) petitions for various shippers, raising various legal questions with regard to various marketing orders, not only with regard to oranges, but also lemons and other commodities, although this is the only one I filed on this particular order.

I would also state in that connection that it has been my experience in filing these 15(A) petitions that they were delivered in Washington the next day. I have always proceeded upon the assumption that they were received and filed the day after they were airmailed to Washington, and this is the first occasion on which any question has ever been raised by the government, or the Department of Agriculture, with regard to the filing date.

You may cross-examine.

Mr. Dreifus: One moment, your Honor. There is a great deal of material here. [105]

Cross-Examination

By Mr. Dreifus:

Q. Mr. Weikert, at the time that you consulted with the defendants and prepared the petition and mailed it to Washington, were you familiar with the rules of practice prescribed by the Secretary of Agriculture covering the filing of petitions under Section 8c(15)(A) of the Agricultural Marketing Act, as amended, as those regulations are published in Title 7 of the Code of Federal Regulations?

A. I am not sure that I was familiar with all of the rules of practice that were in effect at that

(Testimony of G. V. Weikert.)

time. They change them so often and sometimes they don't even publish the new ones when they have been changed. I had that experience just last week, I found that the latest published rules of practice of the Department of Agriculture do not include all of the current amendments. I discovered that in a P.A.C.A. hearing in which I appeared in Los Angeles last week. The hearing examiner himself didn't know what the latest regulations were.

Mr. Dreifus: Your Honor, I move to strike—I withdraw the motion.

The Court: Well, I will strike the statement that the hearing officer didn't know what the latest regulations were. I will strike that. [106]

Q. (By Mr. Dreifus): In particular, Mr. Weikert, were you familiar with Section 900.69 of Title 7, of Code of Federal Regulations, sub-section (d), which reads in substance that any petition filed under Section 900.52, which is (608c(15)(A)) shall be deemed to be filed when it is received by the hearing clerk?

A. I can't say that I am familiar with that. I don't know when it was adopted, and the number of the section I do not know.

Q. Assuming that this was published in the Federal Regulations, in the Federal Register and in the Code of Federal Regulations prior to the date on which the 15(A) petition was filed here, this would be binding and have the force of law, in your opinion as an attorney, would it not?

(Testimony of G. V. Weikert.)

A. Assuming that it had been so published, I presume that it would, yes. But I do not subscribe to the Federal Register, and I do not believe even the Los Angeles County Law Library has a complete set of the Federal Register.

Mr. Dreifus: I move to strike the last statement, your Honor.

The Court: I will strike the statement regarding the Los Angeles Public Library, I will strike that.

Q. (By Mr. Dreifus): Mr. Weikert, in the last 20 years in your practice of law has it dealt in any proportion with cases which [107] arise out of the activities of the Department of Agriculture?

A. To a very considerable extent. I specialize in agricultural marketing, and the fruit and production business, and its problems generally.

Q. You stated on direct examination that you had filed many 15(A) petitions? A. Correct.

Q. At any time after you mailed the petition to Washington on Thursday or Friday, the 5th or 6th of April, 1956, did you call the hearing clerk's office on the phone to see if the petition was on file?

A. It was the 5th it was mailed. No, I did not. I have never spoken to the hearing clerk's office at any time on any subject.

Q. You testified on direct examination—if my recollection of it is not correct, please correct me—that you advised the defendants that they could ship their oranges only after the filing in good faith of a 15(A) petition, in good faith and not for delay, is that correct? A. That is right.

(Testimony of G. V. Weikert.)

Q. Now, aside from the advice that you gave them, do you know whether or not this particular 15(A) petition, the subject of this discussion, was filed in good faith by these defendants?

A. In my opinion, and so far as my knowledge extends, [108] it was.

Q. Do you know whether it was filed for the purpose of obtaining delay, as that word is used in Section 8c(14) of the Marketing Act?

A. In a situation of this kind I don't think the word "delay" is applicable. There was nothing that could be delayed by filing such a petition. I think the only portion of that section that is applicable is the good faith portion of it.

Q. Was this petition filed for the purpose of obtaining an opportunity, immediately after the filing of the petition and prior to the government obtaining a temporary restraining order, in which the defendants could ship oranges in excess of what would otherwise be a binding prorate allotment?

A. No, it was filed for the purpose of obtaining a ruling upon which I believed to be a unique and substantial and meritorious question of law, based upon a very substantial complaint and injury, and in filing it I advised the petitioners that they had every right to avail themselves of the privilege given them by the Congress in this legislation of disregarding the allotment until and unless they were enjoined.

Q. At the time Mr. Woodall discussed with you

(Testimony of G. V. Weikert.)

the prospect of filing the petition, and at the time Mr. Lo Bue signed the petition, and in the course of making such [109] arrangements as you may have made with them for representing them in this matter, was it made a part of your arrangement that an adverse decision on the petition would be appealed to the district court?

A. No, we didn't anticipate an adverse decision. We didn't know what the decision would be, and we would cross that bridge when we came to it.

Mr. Dreifus: No further questions, your Honor.

(Witness excused.)

Mr. Weikert: The defendants rest, your Honor.

The Court: All right.

Mr. Dreifus: Has the defense rested?

The Court: Yes.

Mr. Dreifus: We have a little bit of evidence we would like to put on. I have one witness who is waiting. [110]

* * *

Afternoon Session—2:00 P.M.

Mr. Dreifus: I understand the defendants have rested their case?

Mr. Weikert: Right.

Mr. Dreifus: In further rebuttal the plaintiff calls Mr. Beard.

WILFORD S. BEARD

called by the plaintiff in rebuttal, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name, please.

The Witness: Wilford S. Beard, Special Agent, Agricultural Marketing Service, Internal Audit Division, United States Department of Agriculture.

Direct Examination

By Mr. Dreifus:

Q. What is your residence, Mr. Beard?

A. Los Angeles, California.

Q. And how long have you been a special agent of the Internal Audit Division of the Department of Agriculture?

A. I have been in my present capacity approximately twenty years; the agency name changes.

Q. Calling your attention to the month of April, 1956, did you during the week beginning April 9, 1956, have occasion to come in contact with Mr. Mario Lo Bue? [111]

A. Yes.

Q. Do you know Mr. Mario Lo Bue?

A. Yes, I do.

Q. Would you identify him?

A. Mr. Lo Bue in the middle there.

Q. Do you also know Mr. William L. Woodall?

A. Yes, I do.

Q. Is he present?

A. No, he isn't. Not the one I know.

Mr. Weikert: I don't hear you.

The Witness: No.

(Testimony of Wilford S. Beard.)

The Court: He said no, not the one he knows. Was that your answer?

The Witness: Yes.

Q. (By Mr. Dreifus): Would you point out Mr. Lo Bue in the courtroom, exactly?

A. Mr. Lo Bue is seated between the two gentlemen, between Mr. Weikert and the other man.

The Court: Let the record show he has identified Mario Lo Bue.

Q. (By Mr. Dreifus): Now, calling your particular attention to April 10, 1956, did you see Mr. Lo Bue on that day? A. Yes. [112]

Q. Where, and under what circumstances, and what time?

A. On a Tuesday, April 10th, I called on Mr. Lo Bue at his packing house in my official capacity approximately——

Q. And——

The Court: Wait a minute, I don't think he had finished.

The Witness: ——approximately three p.m.

Q. (By Mr. Dreifus): And did you have a conversation with Mr. Lo Bue?

A. Yes, I did.

Q. Could you relate that conversation, what you said and what he said?

A. Yes. I inquired as to the supply of oranges on the platform in Lo Bue Brothers Packing House, on Sweetbriar Street, I believe it is 221 Sweetbriar, Lindsay, as to what disposition he intended to make of them, and he told me that he was

(Testimony of Wilford S. Beard.)

going to sell them, that the previous week, on a Thursday, he had engaged the services of an attorney, Mr. Weikert, and that Mr. Weikert had prepared a document, a petition which he had signed on behalf of the partnership and that at that time Mr. Wiekert advised him that it would be airmailed and under no circumstances was he to in any way violate or exceed his allotment before Saturday, but after that date he was free. He didn't—wasn't compelled to comply with the regulations of that marketing order until such time as ordered to do so by the court. [113]

Q. Is that all of the conversation?

A. That was the extent of the conversation.

Q. Now, on the 12th of April, 1956, did you have further occasion to see Mr. Lo Bue?

A. Yes.

Q. And what were the circumstances, and where did it occur?

A. In that instance, in my official capacity I served him with a restraining order at his office, also to his brothers, Joseph Lo Bue and Fred Lo Bue.

Q. Was that a restraining order issued by this Court? A. Yes.

Q. Did you have a conversation with him at that time? A. Yes.

Q. Where did it take place?

A. It took place in the office.

Q. And was anyone else present?

A. Just the three brothers.

(Testimony of Wilford S. Beard.)

Q. Do you know the names of the other brothers?

A. Yes, I do, Joseph and Fred.

Q. And what was said at that time?

A. The same thing as was related to me on the 10th. He didn't enlarge on it. He explained that he had signed this document on behalf of the partnership, and they were not to violate prior to it being received in Washington. [114] They specifically were not to violate prior to the Saturday, the 7th, and that was the extent of the conversation.

Mr. Dreifus: That is all, your Honor.

Mr. Weikert: No questions.

The Court: That is all, Mr. Beard.

(Witness excused.)

Mr. Dreifus: At this time the plaintiff offers in evidence as Plaintiff's Exhibit 2, which I believe is next in order, is that correct?

The Clerk: That is right.

Mr. Dreifus: The following paragraphs of the first stipulation, namely, paragraphs 17 through 22 of the Stipulation of Facts, inclusive, and as Exhibit 3——

The Court: Let's see, that is paragraphs 17, 18, 19, 20——

Mr. Dreifus: 21 and 22. I believe 22 is the last paragraph in the stipulation of facts.

The Court: All right, those paragraphs of the Stipulation of Facts filed on October 11th, designated as paragraphs 17, 18, 19, 20, 21, and 22 will

be received and marked Plaintiff's Exhibit No. 2 in evidence.

(The paragraphs referred to were marked as Plaintiff's Exhibit 2, and were received in evidence.)

Mr. Dreifus: As Plaintiff's Exhibit 3 the plaintiff offers the following paragraphs of the supplementary stipulation of facts, namely, paragraphs 1, 2, 3, 4, 5, 6, [115] 7, and 8, which I believe are all the paragraphs in the stipulation.

Mr. Weikert: The Court will note that in each of these stipulations, that is the first stipulation of facts, and the supplementary stipulation of facts, the right of the parties to object to the introduction of any of these paragraphs is reserved.

The Court: That is right.

Mr. Weikert: Therefore I object to the introduction into evidence of the portions of the first stipulation, and the second or supplementary stipulation now offered, on the grounds they are incompetent, irrelevant and immaterial, that they contain nothing but conclusions on the part of the witnesses, and that they are hearsay as to the defendants.

Mr. Driefus: Would counsel specify which paragraphs he is referring to? Are you referring to the paragraphs I just offered?

Mr. Weikert: Yes, to all—we stipulated that if these various witnesses were called in person, they would testify to these matters. Now, I am objecting

to the receipt of those matters in evidence on the grounds just stated.

Mr. Dreifus: Oh.

The Court: I think for the record, your objection also included the offer of the paragraphs that we have designated as Plaintiff's Exhibit 2; is that right? Did your objection [116] include the——

Mr. Weikert: Yes.

The Court: I will let your objection precede my ruling with respect to the receipt in evidence of Plaintiff's Exhibit No. 2, and——

Mr. Weikert: Pardon me, before your Honor rules, I want to straighten one thing out with counsel. I notice his offer includes paragraph 8 of the second stipulation, which is merely a stipulation that the record of the administrative proceedings on file with the hearing clerk is authentic. That is in another category.

Mr. Dreifus: I have another exhibit to offer.

Mr. Weikert: I wondered if you wanted to include that in this particular offer.

Mr. Dreifus: All right, I will limit my offer of Plaintiff's Exhibit 3 to the first seven paragraphs of the second stipulation, your Honor.

Mr. Weikert: Yes, that puts them all in the same category, namely, that both Exhibits 2 and 3 consist of the testimony which it is stipulated would have been given by various witnesses in Washington had they been called, and my objection is directed to the relevancy, materiality and competence of that testimony, if given, and particularly

that it consists mainly of conclusions and that it is hearsay as to the defendants. [117]

The Court: All right. I will overrule the objections, and will receive paragraphs 1 through 7, of the supplementary stipulation of facts filed in this court on October 30, 1957, and that will be marked Plaintiff's Exhibit No. 3.

(The paragraphs referred to were marked as Plaintiff's Exhibit No. 3, and were received in evidence.)

Mr. Dreifus: Yes, your Honor. Plaintiff's Exhibit 2 has already been received, I understand?

The Court: Yes, that was received and I permitted Mr. Weikert's objection to precede my ruling, and then overruled the objection, and it is admitted as Plaintiff's Exhibit No. 2 in evidence.

Mr. Dreifus: As Plaintiff's Exhibit 4, I offer in evidence paragraph 8 of the supplemental stipulation.

Mr. Weikert: No objection to that.

The Court: All right, it will be received then and marked Plaintiff's Exhibit No. 4 in evidence.

(The paragraph referred to was marked as Plaintiff's Exhibit No. 4, and was received in evidence.)

Mr. Dreifus: As Plaintiff's Exhibit No. 5 I offer in evidence the transcript, of pages 1 through 140, of a hearing held June 14, 1956, in Los Angeles, California, before Glenn J. Gifford, Presiding Offi-

cer of the United States Department of Agriculture, on AMA Docket No. 14-1.

Mr. Weikert: To which I object unless all exhibits [118] which were received and which are a part of that transcript are also included.

Mr. Dreifus: I am going to come to that, your Honor. For clerical reasons I wanted to separate the exhibits.

Mr. Weikert: I don't want them piecemeal.

The Court: Do you intend to offer the other documents?

Mr. Dreifus: Yes. I will offer them as a separate exhibit. We have a reproduction problem.

The Court: Based on counsel's statement then you have no objection to this transcript?

Mr. Weikert: No.

The Court: That will be received and marked Plaintiff's Exhibit No. 5.

(The transcript referred to was marked as Plaintiff's Exhibit No. 5, and was received in evidence.)

Mr. Dreifus: As Plaintiff's Exhibit 6 I offer in evidence certain documents, presently marked as follows: U. S. Department of Agriculture, AMA No. 14-1, Exhibit Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10.

Mr. Weinkert: Is that all the exhibits?

Mr. Dreifus: That is the total number of exhibits in the original file.

Mr. Weikert: I have no objection.

The Court: They will be received and marked

Plaintiff's Exhibit No. 5 which consists of exhibits 1, 2, 3, 4, 5, 6, [119] 7, 8, 9, and 10 which were received at the administrative hearing.

The Clerk: That is Exhibit 6?

The Court: That will be Plaintiff's Exhibit 6.

(The documents referred to were marked as Plaintiff's Exhibit No. 6, and were received in evidence.)

Mr. Dreifus: As Plaintiff's Exhibit 7, I offer in evidence the certificate of Presiding Officer of the United States Department of Agriculture, Docket No. AMA No. 14-1 consisting of four pages of typographical and clerical corrections to the record of the administrative hearing.

Mr. Weikert: No objection.

The Court: It will be received and marked Plaintiff's Exhibit No. 7.

(The document referred to was marked as Plaintiff's Exhibit No. 7, and was received in evidence.)

Mr. Dreifus: With the permission of the Court, may Plaintiff's Exhibits 6 and 7 be withdrawn temporarily in order that they may be reproduced and true photostatic copies substituted therefor?

Mr. Weikert: No objection.

The Court: That is satisfactory.

Mr. Dreifus: The plaintiff rests its case.

Mr. Weikert: Defendants rest.

Mr. Dreifus: May I have a moment, your Honor? [120]

The Court: Yes.

Mr. Dreifus: Before I begin, your Honor——

The Court: Let me inquire. I didn't know whether you intended to offer any further exhibits?

Mr. Dreifus: No, we have no further evidence at all.

The Court: No further evidence.

Mr. Dreifus: The defendants have nothing further?

Mr. Weikert: Nothing further.

(Argument by Mr. Dreifus on behalf of the government.)

(Argument by Mr. Weikert on behalf of defendants.)

(Argument by Mr. Griffin on behalf of the government.)

(Reply by Mr. Weikert on behalf of defendants.)

(Remarks by the Court, ending with:)

The Court: Well, I will review the documents further, and give further thought and study to the matter and will render a decision. I may have time to get at it some time next week. So the matter will stand submitted.

[Endorsed]: Filed October 23, 1958. [121]

PLAINTIFF'S EXHIBIT No. 5

United States Department of Agriculture
AMA Docket No. 14-1

In the Matter of the Petition of
LO BUE BROTHERS, a Co-Partnership,
Petitioner.

Room 1003, 1031 South Broadway,
Los Angeles, California,

Thursday, June 14, 1956

The above-entitled matter came on for hearing,
pursuant to notice, at 2:30 o'clock p.m.

Before: Glen J. Gifford,
Presiding Officer.

Appearances:

JOHN S. GRIFFIN, ESQ.,
Regional Attorney, U. S. Department of
Agriculture,
Appearing on Behalf of the U. S. De-
partment of Agriculture.

GEORGE V. WEIKERT, ESQ.,
918 Oviatt Building,
Los Angeles 14, California,
Appearing for the Petitioner.

PROCEEDINGS

Presiding Officer Gifford: If you are ready to
proceed, gentlemen, the hearing is in order.

Plaintiff's Exhibit No. 5—(Continued)

Do you care to enter your appearances and representations?

Mr. Weikert: G. V. Weikert, 918 Oviatt Building, Los Angeles 14, California, appearing for the Petitioner.

Mr. Griffin: John S. Griffin, Office of the General Counsel, U. S. Department of Agriculture, Los Angeles, California, appearing for the Deputy Administrator, Agricultural Marketing Service, U. S. Department of Agriculture.

Presiding Officer Gifford: My name is Glen J. Gifford. I am a Hearing Examiner from the Office of Hearing Examiners from Washington, D. C., and I have been designated to conduct this hearing.

As you all know, the testimony in this type of case is taken under oath or affirmation. The witnesses will therefore come forward and be sworn or affirmed and give their testimony, which will be followed by the usual cross-examination that is necessary.

The Petitioner, of course, has the burden of proof to sustain the material allegations of their petition. Before the close of the hearing a time will be fixed within which briefs may be filed, and if they are filed they are required to be filed in four copies and to be printed or mimeographed. They may be signed either by the Petitioner or party submitting [3*] the brief or by the representative of the party. When they are thus prepared, they should be mailed

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Plaintiff's Exhibit No. 5—(Continued)

to the Hearing Clerk, Room 112, Administration Building, U. S. Department of Agriculture, Washington 25, D. C. The time for filing briefs will be fixed later in the hearing.

When this record is completed, it is checked and certified by me, and filed in the Office of the Hearing Clerk, where it becomes a public record. However, those records cannot be removed from that office. Therefore, if any of you desire a copy of this transcript for your own files, you will have to order it from the reporter and pay for it as you may agree to do. In other words, the Government does not furnish free copies of this type of record. I think that Mr. Weikert and Mr. Griffin are perfectly familiar with the procedure of this type of hearing.

Are you ready to proceed?

Mr. Weikert: I would like to call Mr. Lo Bue.

Whereupon,

MARIO LO BUE

was called as a witness on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Weikert:

Q. Will you please state your full name and address?

A. Mario Lo Bue, Tulare County, California.[4]

Q. What is your business or occupation, Mr.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

Lo Bue? A. We grow and pack citrus.

Q. When you say "we," do you refer to Lo Bue Brothers?

A. Yes; two brothers and myself.

Q. Is that a partnership? A. Yes.

Q. And who are the partners?

A. Fred Lo Bue, Joe Lo Bue, and myself.

Q. Where is the principal place of business of Lo Bue Brothers?

A. 201 South Sweetbriar, Lindsay, California.

Q. And that is in Tulare County?

A. Yes.

Q. And Tulare County is in the so-called Central California District? A. Right.

Q. And you are the individual who signed the petition on behalf of Lo Bue Brothers in this proceeding? A. I am.

Q. Will you state, please, in general the nature of the business operated by Lo Bue Brothers?

A. We pack citrus for other growers as well as our own citrus we raise. We pack on consignment basis and do not buy citrus or operate in any other form.

Q. But the partnership, Lo Bue Brothers, you do grow citrus [5] of your own?

A. Yes; we have 120 acres of our own in citrus, planted in citrus.

Q. And is all of the citrus handled by Lo Bue Brothers grown in Central California?

A. Yes.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

Q. How long has Lo Bue Brothers been operating in this manner?

A. We started back originally in 1938.

Q. How long have you personally been connected with the citrus business in Central California?

A. Since 1934.

Q. Approximately what percentage of the navel oranges handled by Lo Bue Brothers represents its own fruit and how much or what percentage represents fruit handled on consignment for other growers?

A. Well, between eight and nine per cent, I would say, is our fruit and the balance is for other growers.

Q. What is the normal shipping season for navel oranges grown in Central California?

A. I'd say from March 15th until about the first of April, that is the latest—oh, no, I would say, or I meant to say, from November 10 or thereabouts to about the 15th of March, and not later than April 1st.

Q. Has that been the shipping season during all of the [6] years that you have operated in Tulare County?

A. Yes.

Q. Will you tell us the manner in which the navel orange crop matures and reaches its peak, after which it deteriorates, over what period of time is that?

A. Well, we start picking generally about the 8th or the 10th of November, and I would say that

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

it reaches its peak right around Christmas or thereabouts, anyway the middle of December, and then it starts tapering off after January and February on into March.

Q. And what happens with respect to the quality of the fruit; how long does it hold up in marketable condition?

A. Well, the longer it stays on the trees, the worse condition it gets because it begins to get puffy, you know, and it won't hold up on shipments because they are apt to break down.

Q. Now, during the past years when this marketing order that is herein questioned, namely, No. 14, when Order No. 14 has been in operation, how late in the season has the regulation continued on Central California navel oranges?

A. Around the middle of March, we have always been through and all the regulations have been off or through at that time.

Q. That is up until the season that has just finished?

A. Yes; the one that has just finished, which it went clear on into May. [7]

Q. Normally at about what date do the Central California navels come into competition with Southern California navels?

A. Oh, well, that varies a little bit, according to the season.

Q. I mean on the average.

A. Well, it takes three to four weeks.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

Q. Well, about what date?

A. Oh, about the 15th or so of December. A lot of that is called generally on account of maturity.

Q. What I am talking about is when is the bulk of the Southern California navels, what date that comes into the market when shipments become heavy from the South and in active competition with the Central California navels?

A. That also varies according to the season, but it begins to get heavy about the middle of February.

Presiding Officer Gifford: Do you just have two divisions now, the Northern and the Southern Divisions?

Mr. Weikert: That is right.

Mr. Griffin: Your Honor, I believe that there are three, there are the three, including Arizona.

Mr. Weikert: But for our purposes we are only considering the two, the Central California and Southern California.

Presiding Officer Gifford: That is the reason that I asked the question, because I knew that there were formerly three [8] divisions.

Mr. Griffin: Well, that is not quite right either because actually there are three, there is the Edison District which is separate.

Mr. Weikert: But we are only considering the two.

Presiding Officer Gifford: Just so I understand what you are talking about.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

Mr. Weikert: As far as this proceeding is concerned, we are only dealing with the two districts, namely, the Central and Southern California Districts.

Presiding Officer Gifford: That is what they are known as, the Central and Southern Districts?

Mr. Griffin: That is right.

Presiding Officer Gifford: Pardon the interruption; you may proceed, Mr. Weikert.

Q. (By Mr. Weikert): Approximately how many carloads of navel oranges did your company have left to be shipped at the end of March of this year? A. At the end of March?

Q. Yes; the end of March. A. Well——

Q. The end of March or the first of April.

A. We had roughly around 40-some cars.

Q. And I understood you to say that in other years you [9] would be all through by that time?

A. Yes.

Q. And marketwise, what effect did the delayed shipment of Central California fruit this season have; what was happening to the price of Central California navels in the latter part of March?

A. That is when the Southern boys were going stronger and they were getting preference over Tulare County, getting from four bits to a dollar a carton over Tulare County navels, anyway from 50 cents to a dollar or more. Our fruit was deteriorating and theirs was just in their prime so they

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

wouldn't want our fruit as much as they would the South.

Q. And at the rate at which allotments were being given to your company, how long would it have taken to market the 40 cars that you had left to go at the first of April?

A. Well, they changed that at the meetings as they go along.

Q. Well, my question is, at the rate that it was.

A. Well, they had originally set up March 6th as the finishing date and we still had probably 25 or so cars to go at that time.

Q. That is what it was set up at originally?

A. Yes.

Q. I am speaking of the situation as it was as of April 1st.

A. We still had at least 25 cars or more [10] to go.

Q. I understood you to say that you had 40?

A. It was 43 altogether, but that was as of March 1st.

Q. How long would it have taken you to move those under the prorate allotment that you were receiving at that time?

A. I do not have the exact figures.

Q. Just roughly?

A. Well, I think another five or six weeks.

Q. And would the fruit represented by those 40 carloads have remained in marketable condition for that length of time?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

A. No; they were already showing deterioration when we shipped these navels.

Q. Was the deterioration very strong or marked?

A. Well, there was considerable, the fruit itself was breaking down a lot and there was a lot more that was going into second grade.

Q. What do you consider to have brought about this condition this year, this situation, where the shipping was being extended beyond the historical termination date?

A. It was way beyond——

Q. Yes, I know; but what brought that about?

A. Well, several reasons, perhaps, but I think a lot of it was because they didn't give us the amount of cars that we should have to have shipped earlier and at the prorated meetings they didn't allot enough earlier and they just let it get too far along. And then the South wanted their share and that just [11] left us to keep on going.

Q. Would you say that this action by the Committee was more favorable to the Southern California growers and handlers in your estimation?

A. Definitely so.

Q. Approximately how many weeks beyond the historical termination date for shipments of Central California navels was the regulation extended this year?

A. Well, I believe it was the end of last week, or the end of May. Now, I could be wrong on that. It should have been not later than the first of April.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

Q. Do you know how much beyond the historical shipping date of Southern California navels the regulation was extended?

A. Not over about two weeks in the South, and we must have had five or six weeks.

Mr. Weikert: You may cross-examine.

Cross-Examination

By Mr. Griffin:

Q. Mr. Lo Bue, when would you say the shipping season for Southern California navels ended in a normal year?

A. I'm not too sure about that.

Q. Would you say it was about the first of May?

A. I'm not too sure.

Q. Well, do they come in about a month later than in Northern California? [12]

A. As a rule, yes.

Q. So their shipping season usually runs about a month later getting through?

A. Well, that's how the boys feel in the office, whether they want to extend it more or not, according to the market.

Q. I am trying to get at the basis for your answer to Mr. Weikert's question where you stated that the shipping season for Southern California navels had been extended about two weeks as compared to four or five weeks up North. I would like to know what you consider the end of the shipping season down South?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

A. I'd say around the end of May.

Q. Around the end of May?

A. Maybe a little sooner.

Q. And this year when did they finish or have they finished?

A. They lifted the prorate about the same week that they lifted it in our county.

Q. Well, do you know if they have finished shipping down here?

A. I wouldn't say.

Q. You don't know that 137 cars went out last week in Southern California? A. No.

Q. Or that there will probably be a hundred cars that [13] will go out this week?

A. No; I don't know; it could be storage.

Q. But actually you do not know when the Southern California navel shipping season is ended down South? A. Not this season.

Q. So on that basis you do not know whether or not the extension was longer or shorter than it was up North?

A. We always have been through not later than April and I know that they go way beyond us because we start a month before.

Q. But you do not know when it ended down here or if it has ended at the present time?

A. Not this season.

Mr. Weikert: Counsel, for the record can we stipulate as to the date when the regulation ended?

Mr. Griffin: Mr. Weikert, we are going to put

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

in evidence documents as exhibits that will show the exact date when the shipping ended, the regulation ended, how many cars went forward on each week, and all that information. I think that that will be a more complete way to have it in the record.

Mr. Weikert: But I meant as part of my case if you will stipulate as to the date when the regulation ended.

Mr. Griffin: Well, we can do that, yes. The regulation ended on May 28th this year.

Mr. Weikert: Thank you; that was for both districts. [14]

Mr. Griffin: Pardon me—just a second. I believe I gave you the wrong information. Yes; I guess that was for Central California. And I believe it ended for Southern California on the same date.

Mr. Weikert: All right, then, May 28th for both districts. Thank you.

Q. (By Mr. Griffin): Now, Mr. Lo Bue, I understood you to say that because the crop in Central California was required to be held longer than normal, that there was a price differential that arose between Southern and Northern California navels?

A. Yes.

Q. When did this occur approximately?

A. We noticed it, I think—

Q. Was that after the fruit began to deteriorate up North?

A. It was more so then than before. We always have a little edge even without that, but it did go

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

more so after the fruit showed deterioration and discoloration, it did go fast.

Q. And by that you mean that the prices declined up North, did they?

A. Yes, and many of the better buyers, in fact, backed off.

Q. Do you know that on April 7th the f.o.b. return to producers in Central California was \$1.87 per carton, and on [15] May 19th the return was \$2.59 per carton?

A. Was that on Tulare County—I don't believe I got the question straight.

Mr. Griffin: Will you read it back?

(Question read.)

The Witness: Well, that could be so, the market could have gone up. It still didn't mean the Southern boys didn't get a lot more than we did.

Q. (By Mr. Griffin): Would you say that the condition of navels in Central California on the 19th of May was better or worse than on the 7th of April?

A. I don't have the figures with me.

Q. I am just asking whether or not the navel oranges up there were in better shape on the 19th of May than they were on the 7th of April?

A. No.

Q. They were in worse shape on the 19th of May; is that right? A. Yes.

Q. Do you know that on the 3rd of March that

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

the navel oranges in Southern California were bringing a price approximately 25 cents a carton higher than the Central California navels?

A. I thought it was more than that. [16]

Q. You thought it was more than that on the 3rd of March?

A. Third of March—well, maybe not, maybe that was right.

Q. And this spread continued and even widened all during the month of March?

A. Like I say, I don't have those figures so that I can say yes or no.

Q. But that spread was approximately the same and did not change very much even in the months of April and May?

A. Oh, there were lots of sales where it was 50 cents or six bits. I'm going by auction sales, not by private sales.

Q. Do you have any figures that would support the 50-cent or the 75-cent differential?

A. Not with me.

Q. Now you stated that on April 1st you had approximately 40 cars left to market. Do you know whether you were in any different relation with respect to the cars that you had left to market than any other handler up there in Central California—that is in proportion to your total tree crop?

A. I don't have the other boys' figures, I wouldn't know about them.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

Q. Well, you have a pretty general knowledge of the situation up there, don't you?

A. Well, I can't keep up with all the boys, I am sure.

Q. And you don't know whether your condition was better [17] or worse than the others?

A. I don't think so, no.

Q. But I asked you whether you thought your condition was any better or worse?

A. All I know is, we had a lot of fruit.

Q. Well, so did everybody else up there, didn't they?

A. Some did and some didn't have as much.

Q. Well, let me ask you this question: Do you think that the bad weather that occurred in late November and through the month of December had anything to do with the fact that more navels, more Central California navels were available to market in March and April and May this year than in other years?

A. Will you repeat that again, please?

Q. Well, let's break it down a little bit. Isn't it true that they had rather bad weather conditions up in Central California in late November and through the month of December last year?

A. Yes; we had some bad weather, yes.

Q. Isn't it also true that the crop probably was the latest maturing that you have had for many, many years, if not forever?

A. Yes.

Q. Don't you think that that has something to

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

do with the large quantity that was available and had to be marketed through the months of March and April? [18]

A. Not that much; it would have been a little, maybe five or six weeks later.

Q. Do you know how many cars of navel oranges were marketed in Central California before the first of January last year?

A. I wouldn't know offhand, no.

Q. Do you know that there were approximately 2,000 less cars marketed than for the 10-year average prior to the first of January up there?

A. I wouldn't know that either.

Q. Well, just assuming that that is true, when do you think that those 2,000 cars should be marketed, Mr. Lo Bue?

Mr. Weikert: That is objected to as being argumentative and assuming something that is not in evidence. The witness is being questioned about something that he says he doesn't know about.

Presiding Officer Gifford: That is objectionable.

Mr. Griffin: All right.

Q. (By Mr. Griffin): I believe you indicated that this was the first year that the regulation had gone past the first of April?

A. To my knowledge.

Q. You don't know that in 1954, the 1954-1955 season, the regulation didn't terminate until the 23rd of April?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

A. You mean lifted then, or the last shipments were made? [19]

Q. I just asked if you know that that was when the prorate was lifted?

Mr. Weikert: Are you referring to Central California or Southern California?

Mr. Griffin: Central California.

The Witness: I don't recall that, sir.

Q. (By Mr. Griffin): Mr. Lo Bue, how did your returns this year on your total pack-out compare with other years on Central California navel oranges? A. We had a fair season.

Q. Isn't it true that you had the best season you have had for 10 or 15 years?

A. One of the best.

Q. If not the best?

A. Well, as I say, I'd have to check figures to give you an accurate answer on that. It was a good year, no question about it.

Q. Do you think that the restricted movement of oranges in the months of January, February and March had anything to do with those returns?

A. Could be, but still we wouldn't have had so much of our fruit that went on the ground or into by-products which didn't bring nearly as much.

Q. What I am talking about is the total returns. Do you [20] think you would have had as much in total returns if there had been no restriction on marketing of oranges from Southern California or Central California?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

A. I think I could have, yes.

Q. You think you would have?

A. Uh-huh. It is just a matter of watching the market itself and not going overboard on the thing.

Q. Well, you can watch the market all you want to and if the price doesn't go up above a certain price, you can't sell your oranges at that price, can you?

A. I didn't get that.

Q. I say, you can watch the market as much as you want to, but if the price doesn't go above a certain price, you can't sell your oranges above that price?

A. That is true, nobody can.

Q. That is true regardless of how well you watch the market, is it not?

A. It's the same with the prorate, they try to determine what the best price will be but they don't always hit it right and get the top market.

Q. Isn't it also true historically, isn't it indicated that if you market as many as 1400, 1500 or 1600 cars of Central California navels a week, that it has a tendency to knock the price down?

A. Yes; certain times of the year, yes. [21]

Q. And do you think that without any restriction or regulations that the handlers from Central California or even from Southern California, do you think that they would have restricted their shipments under that amount?

A. I don't know, I couldn't say what the other boys would do. I cannot speak for the other people.

Q. Well, have they done that in the past and, if

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

so, when? A. Well, I think we have.

Q. Well, I am talking about the total.

A. I don't know.

Q. What happened in 1950-1951 and in 1952-1953 when there wasn't any regulation?

A. We still did all right.

Q. You did all right but the prices were substantially lower, were they not?

A. Well, the whole economy changed since that time; everything is higher now than it was then.

Q. Would you say that it was even more so than during the war years, 1945-1946, when you had price ceilings?

Mr. Weikert: Wait just a minute. What is "more so"?

Mr. Griffin: Very well. Were the prices more so than during the war years?

Mr. Weikert: More what?

Mr. Griffin: Higher.

The Witness: I have forgotten what the ceiling was. [22]

Q. (By Mr. Griffin): Yet the returns this year, Mr. Lo Bue, actually are higher than during any period including the war?

A. And so are all of our expenses for growing them likewise.

Q. Well, isn't it true, Mr. Lo Bue, that what you call the normal shipping season varies from year to year and one year it might start early and end late?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

A. Yes; they never start on the same day.

Q. And likewise they never finish on the same day?

A. No.

Q. And that depends upon a lot of factors, there may be different maturity periods and the weather conditions could have a great influence on it?

A. That is right.

Q. And when you used the word "normal," were you talking about this year, last year, or two years ago?

A. An average.

Q. An average?

A. Yes.

Q. And you would say that on the average they are all through by the first of April?

A. Or even sooner.

Q. And when you say that are you talking about your own shipping or are you talking about everybody up there? [23]

A. Well, on the prorate we are all the same; there is no difference.

Q. But a lot of people wait until the prorate is terminated and still keep on shipping, do they not?

A. Yes; if they want to gamble on the market and hold it, hold the fruit and put it in storage.

Q. Would you know of your own knowledge of what the other shippers did about ending their shipping?

A. I cant' know what the other boys do, no.

Q. So you are talking about your own?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

A. I am talking about the prorate finishing up at those periods of time.

Q. But as far as shipments are concerned, as far as shipments being completed, you are talking about your own shipments?

A. Well, I would say Tulare County. We follow the same as anybody else in Tulare County.

Q. But going back again, do you have knowledge of what the other shippers do about ending their shipping?

A. Well, when they issue us the last prorate.

Q. Well, again, isn't it true that there are many shippers up there who continue to ship after the prorate has been lifted?

A. There is a few, I would say.

Q. And do you know of your own knowledge when their shipping seasons terminate?

A. No. [24]

Q. So you are speaking only of what you know about yourself?

A. When they left the prorate, that is when the general shipments end unless somebody who is gambling on the market wants to hold. Otherwise, we finish generally pretty much the same time.

Q. Mr. Lo Bue, you indicated in an answer to Mr. Weikert that the organization with which you are connected is a partnership composed of yourself and your two brothers, George and Fred?

A. Joe and Fred.

Q. I'm sorry; Joe and Fred?

A. Yes.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

Q. Is Mr. Luther Woodall a partner or have any connection with your organization?

A. He acts as sales manager.

Q. He is your sales manager? A. Yes.

Q. Is he your packinghouse manager?

A. We have another man for that, Mr. Waller takes care of the house.

Q. Mr. Woodall is just your sales manager, then; is that right? A. Yes.

Mr. Griffin: I have no other questions. [25]

Redirect Examination

By Mr. Weikert:

Q. Have you ever known Central California navel oranges to be shipped by anybody as late as May 28th before this current year?

A. Not unless they were just holding to gamble on the market.

Q. But as far as the general operations are concerned?

A. General operations, they are all through.

Q. Have you ever known any year in which the general operations extended as late as May 1st before this year? A. Not for Tulare County.

Q. Beg pardon?

A. Not for Tulare County.

Q. Well, that is what I am talking about.

A. No.

Mr. Weikert: That is all.

Plaintiff's Exhibit No. 5—(Continued)

Presiding Officer Gifford: If there is nothing further, you may stand aside.

(Witness excused.)

Mr. Weikert: I would like to call Mr. Woodall.

Whereupon,

WILLIAM LUTHER WOODALL

was called as a witness by and on behalf of the Petitioner, and being first duly sworn, was examined and testified as follows: [26]

Direct Examination

By Mr. Weikert:

Q. Will you give your full name, please?

A. William Luther Woodall.

Q. And where do you live, Mr. Woodall?

A. Lindsay, California, 450 Lafayette.

Q. Are you connected in any way with Lo Bue Brothers? A. Yes.

Q. And in what capacity?

A. Sales manager.

Q. Will you outline briefly your experience in the citrus business?

A. Well, I started working in the citrus business about in 1920, 36 years that I've been growing, shipping, managing deals.

Q. And in what areas have you had experience?

A. Southern California, Central California and Arizona.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

Q. Are you familiar with the various shipping seasons for navel oranges from the different producing areas of California?

A. I would say that I am familiar with them, but as to the exact dates I wouldn't say that I would know every year the exact dates, what time they were closed and so on. But I would say that I am 98 per cent familiar with them.

Q. What would you say is the normal date on which the [27] Central California navel shipping season is completed or ended?

A. Well, that has been changed the last few years. We used to figure that we had to have all Central California oranges shipped by Christmas. Then some seven or eight years ago they started holding Central California navels into March. And then they extended the prorate into March. And I believe that last year they extended it into April. As far as I can recollect that is the only time they extended the prorate into April. But it has just been the last few years in the business that it has been normal to carry a very large percentage of fruit even into March.

Q. As a general rule up to what date does the marketable life of Central California navels extend?

A. To my judgment, it would be April 1st that you would feel free to ship the most of your oranges and carry them satisfactorily.

Q. What happens to Central California navels that are shipped at a later date?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of William Luther Woodall.)

A. Well, they are far past their maturity and a lot of chance of skin breakdown and decay and being dull looking from age.

Q. What effect does that have on the price they will bring?

A. Well, it limits you to certain markets and certain trades that will buy Central California fruit, where they can [28] move it quick and get it out of the way. Another thing that it does, it compels the manager or our salesmen to be inclined to sell more of our fruit loose and take less money. I mean to sell to closer markets and take less money because you know that you are liable for trouble when you go into the far East with it where the competition is rough. You have so much left, you have a large amount of Central California fruit on the tree, and naturally everyone is trying to sell in close markets, and they keep undercutting and undercutting until you are way below the actual prices that it should bring. You will have this large percentage of your fruit at the auctions because in going east with your strongest fruit that you are pretty sure will carry, which is a small percentage.

Q. Before the season that has just ended, do you know of any season in which navel oranges were shipped from Central California as late as May 28th?

A. The volume would be nil. One man has had a practice of holding a very few oranges to way, way late, the same as they do in Southern Califor-

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

nia. You have one shipper in Southern California that ships navel oranges to July 1st or July 4th, and we have one grower up there that has made a practice of doing it, too. He is a good-sized grower.

Q. And who is that? A. Stievers.

Q. Do you have any—I'm sorry, strike that. Do you know [29] of any year before the season just concluded when any quantity of navel oranges have been shipped out of Central California after May 1st?

A. No; nor any quantity of oranges shipped—that's right, after May 1st—and a very small volume after April 1st.

Q. A very small volume?

A. A very small percentage of the crop.

Q. During the season just concluded, were there any handlers in Central California to your knowledge who shipped their Valencias before they finished shipping navels?

A. Yes; so they told me, they started on the Valencias before they finished the navels.

Q. In other words, they had finished shipping the 1956 summer crop before they had shipped their 1955-1956 winter crop? A. That's right.

Mr. Griffin: I might also remark that that might be objected to as hearsay but I don't intend to make the objection. I just want the record to indicate that I am not asleep.

Mr. Weikert: I will stipulate that you are not.

Presiding Officer Gifford: All right. I thought if

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

you wanted to raise the question, you would object.

Q. (By Mr. Weikert): During the navel orange season just concluded, how did the percentage of elimination by Lo Bue Brothers compare with its percentage of elimination during previous [30] seasons?

A. Well, we finished shipping, I think it was April 11th this year and our elimination was a little over double, I will say, over my past operations of different houses that I managed, including Lo Bue Brothers, over double over previous years. That is going back through the life of prorate; I wouldn't include the frost years, of course.

Q. Referring to Lo Bue Brothers' elimination alone, how did this year's elimination compare with previous years percentagewise?

A. A little over double or thereabouts. I think we ran a little less than four per cent last year and a little less than nine per cent this year.

Q. To what do you attribute the continuation of regulation on Central California navels this season beyond any date in the past when there has been regulation?

A. Well, this is my opinion. You see, we have a prorate board. And as soon as Southern California is in control—well, strike that. As soon as California reaches the higher percentage of the fruit being shipped——

Q. Do you mean Southern California?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of William Luther Woodall.)

A. Southern California, yes. Then we are cut down to one representative.

Q. And who do you mean by "we"?

A. The Central California Orange Growers, the growers from Central California. Although there are people on the board [31] representing a mass amount of fruit which is not growers. And I feel that that group representing a percentage of the prorate are inclined to show a little preference in favor of Southern California. And the reason I feel that way—I will just mention the group, the Sunkist organization. And why I feel that they are inclined to favor Southern California, their officials are hired by a board and their salaries are set by this board and this board consists of 18 Southern California men—Sunkist men—against two Central California Sunkist men. Therefore, I feel that it is just normal for a person in that position to give way to the masses of the people whom he's working for.

Q. Well, aside from the Sunkist representation on the Administrative Committee, what representation from Central California was there?

A. Well, there is an independent, we are represented by one man who works for the Western Fruit Growers, named Ernie Larson.

Q. He works for Western Fruit Growers?

A. In Southern California, at Redlands. Who, in turn, owns an interest in two other packing houses in Southern California. Therefore I don't

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

feel that we have any thought of our welfare represented on the prorate board.

Q. In other words, if I understand correctly, you feel that independent handlers in Central California such as Lo Bue [32] Brothers that were not represented at all on the Committee at the time this regulation was extended to May 28th?

A. Right.

Q. Bearing in mind that the regulation ended for both Central California and Southern California on May 28th, would you state the approximate number of weeks which that regulation carried over beyond the historical shipping season for Central California navels as compared with Southern California navels?

A. Well, I would say eight weeks on the greatest percentage of our fruit from historical life and historical shipping date on an average.

Q. From where?

A. From Central California.

Q. As compared to how many weeks for Southern California?

A. Two weeks. I think those figures are about that. I am mentioning the lifting of the prorate, not the shipments.

Q. With respect to Lo Bue Brothers only—I am referring to their situation only—at April 1st Mr. Lo Bue has testified that it's his recollection that the company had about 40 cars of navels left to go; is he correct in that?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

A. Well, about—he is wrong in the figures, I think. May 28th—I mean, pardon me, March 26th we had 45,102 boxes that we picked. We released one grower that was 6300 or 6400, which made a total of 77 cars that we had to ship March [33] 28th—no, no, wait, I am wrong, I am looking at the wrong figures. Let me go back. That is March 25th; I was wrong on all of my figures.

Q. Well, you had better start over again.

A. March 25th, we had 49,341 boxes of fruit that we had picked. We released 6500 so it would be 90 cars we had to ship.

Q. As of March 25th? A. March 25th.

Q. And what was the condition of that fruit, generally speaking; how long would it be in marketable condition?

A. In my opinion it didn't look like it was going to be very long because our elimination jumped considerably, kept jumping. On a pool starting February 28th and ending March 12th we eliminated seven per cent of our fruit. On a pool starting March 13th and ending March 24th, we eliminated 10 per cent of our fruit. On our last pool starting March 25th, ending April 9th, we eliminated 19.3 per cent. So that growers had as much as 64 per cent elimination in that pool.

Q. That rising elimination indicates what?

A. Indicated that if you held your fruit, we wouldn't have much fruit that was shipable, if the weather continued we wouldn't have much shipable fruit by the first of June.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of William Luther Woodall.)

Q. In other words, it shows increasing deterioration?
A. Very much. [34]

Q. Well, what, in your opinion, should be done to correct the situation of which you are complaining?

A. In my opinion as an individual, it is that 100 per cent against prorate.

Q. Well, aside from that, assuming that we have the regulation?

A. Assuming we have the regulation—I'd like to state why I am against prorate—my opinion is that Southern California shouldn't be entitled to over 50 per cent of the representation during the shipping season of navels between the shipping seasons of Southern California and Central California, the representation should be 50 per cent Southern California and 50 per cent Northern, taking out executives that might be influenced by the majority of the people they are working for which don't control the majority of the fruit being grown in the State of California.

Q. And would you like to mention anything further that would take care of it?

A. That is all I think about now.

Q. In other words, that would end what you consider discrimination in favor of the South?

A. Well, we feel that we'd have at least a chance then.

Mr. Weikert: You may cross-examine. [35]

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of William Luther Woodall.)

Cross-Examination

By Mr. Griffin:

Q. Mr. Woodall, when does the heavy shipping from Central California, when does it start and when does it start to taper off?

A. Well, our heavy shipments has always been the Christmas week shipments.

Q. And then does that go on?

A. That is the week that we call Christmas shipping week, that is for arrivals for consumptions for the Christmas sales.

Q. Yes. And then isn't it true that shipments continue heavy through January at least from Central California?

A. No; it never has continued heavy as that week.

Q. Let me ask you this question: Isn't it true that substantially more oranges are shipped from Central California in January and February than there are from Southern California?

A. Well, now, that depends on when that occurred, whether it was 20 years ago or this year or two years ago.

Q. The last two or three years since we have had the new marketing order?

A. The last two or three years, yes, because the market is not so good in there, and the Southern California people don't want to ship.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of William Luther Woodall.)

Q. During the months of November and December, how many representatives do they have on the Board in Central California that sit on the prorate committee? I am talking about grower representatives? A. We are supposed to have five. [36]

Q. Isn't it true that there have been five that have sat right down through November and December? A. I think so.

Q. And, in fact, through most of the month of January? A. That's right.

Q. And how many do they have from Southern California? A. Five.

Q. Beg pardon?

A. The same amount—no, not grower representation. You mean grower representation?

Q. Yes. A. They only have ten on a board.

Q. There are only ten on the Board?

A. That's right.

Q. Including handlers?

A. Including handlers. Now we don't have five grower members.

Q. You don't have five grower members from Southern California?

A. Sitting on the Board through that period, I don't think so. They are supposed to have some handlers.

Q. I am talking only about grower members. Do you know whether there are four or five or how many that sit from Central California?

A. I know the independents have one, American

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

Fruit. And [37] National Food has one, which makes it two. And the M.O.D. has one, that makes it three. The Exchange has one, that's four—yes, we have five grower members.

Q. Five. And how many from Southern California during that period? A. I don't know.

Q. Well, there are four handler members, are there not? A. Yes.

Q. Well, four and five make nine.

A. There would be one grower.

Q. All right. Now that is during the period when most of the Central California fruit is marketed, isn't it?

A. No, sir; not the most this year.

Q. You mean there was a greater percentage marketed after the first of February than there was up to the first of February?

A. I don't have those figures. You know them. Why ask me?

Q. Well, we will put them in evidence. I just wanted to know if you knew.

A. I know this much, Mr. Griffin, it was pretty close to half. I don't think it was much over half and I don't think we even had the half shipped. I know that I didn't have half shipped on February 1st, I can answer that.

Q. Aside from representation that sits on the Board, [38] isn't it true that the Committee meetings are open to anyone who wants to come down and tell the prorate Committee what they want?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of William Luther Woodall.)

A. Sure, and they just listen to you.

Q. And isn't it also true that you came down during the month of April and told them what you thought?

A. Yes.

Q. In fact, didn't you even tell them that if they didn't do something, you were going to ship your fruit anyway on two different occasions?

A. I said I was going to try to ship them.

Q. Didn't you say in words and substance as follows: That you were going to find a way to do it and you were going to do it regardless of what the Prorate Committee did?

A. Well, I don't have that authority to talk that way, in the first place.

Q. I am not asking whether you had the authority; I am asking you if you did say that?

A. I don't remember the exact words I said.

Q. Was it in substance the words I have repeated here?

A. I don't think it was so strong as you say.

Q. The fact is, Mr. Woodall, it was in the nature of a threat to the Committee, if they didn't do something about it, that you were going to move your oranges, that you were not going to let them drop; you were going to move them?

A. I believe I said that I was going to try to find a way [39] to move them, I am sure.

Q. Well, we will have other witnesses to testify as to that?

A. It was something to that effect.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

Q. And you did come down and make representations that you were going to do something about it?

A. I have oranges of my own.

Q. Yes, but that doesn't answer my question. I say you did come down and make these representations that you were going to do something about it?

A. That I was going to try to do something about it.

Q. Referring to the question of elimination: Do you know what the elimination for Central California as a whole up there was this year?

A. I haven't saw those figures yet.

Q. Do you know whether Lo Bue Brothers' was greater or smaller than the elimination as a whole?

A. I haven't seen the figure, I said I don't know what the elimination was; I only know what we eliminated.

Q. Do you know what percentage of the tree crop of Lo Bue Brothers went into fresh fruit channels? A. This year?

Q. This year.

A. I know it all went in but about nine per cent—either nine minus or plus—around nine per [40] cent.

Q. It was around nine per cent?

A. That's right.

Q. Do you know what the percentage was for Southern California as a whole?

A. I know this about Southern California, that they have never been able to ship the percentage

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

that they were set up or allotted to ship because their elimination is always greater due to the unmarketable size and grades and they always run from 20 to 30-some per cent unmarketable fruit grown in Southern California over a period of years.

Q. You don't think that any of this fruit in Southern California that couldn't be marketed became that way because they were forced to market a lot of fruit into June and late May?

A. The prorate to my remembrance never extended Southern California into May—I mean into June.

Q. Isn't it true, Mr. Woodall, that nevertheless there have been large quantities of Southern California navels marketed at that time?

A. I will state this, that the Southern California people had a chance to market that fruit had they wanted to take the market. But they have fruit that would carry late and wanted to take a later market which over a period of time has proven much better.

Q. Isn't it true that some handlers down South who, because of prorate and other reasons, hold their fruit and market [41] it late every year?

A. I know of one shipper that holds fruit every year. But he loans out many thousands of boxes of prorate each week—well, I wouldn't say each week—but he loans out many, many thousands of boxes

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

of prorate and holds his. I know there is one shipper that does that.

Q. Is it your testimony that the fact that Southern California navels are required to be marketed as late as the middle of May and sometimes into June has nothing to do with the quantities that have to be eliminated? A. What is that?

Q. I want to know whether or not it is your testimony that the lateness of the marketing season in Southern California has nothing to do with the quantities that are eliminated down here?

A. Well, you know, I have been in Central California for eight years. I have shipped oranges out of Southern California in June myself which carried very well.

Q. Well, as a general proposition, isn't it true, Mr. Woodall, that the longer you hold them, the more you have to throw away and that is true, and that it doesn't matter if it is in Central California or Southern California?

A. That's correct. But I will say another thing, that it is also true that the market is always a lot higher the minute Southern California gets the majority of the shipments. [42]

Q. Always? A. Always.

Q. When do they ordinarily start shipments?

A. There might have been one year. I said the majority of their heavy shipments. In other words, when they get up to shipping about a thousand cars and us shipping about 300, something like that.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of William Luther Woodall.)

Q. And would you say that Southern California is well into the market and shipping large quantities by the first of March?

A. Well, they didn't ship large quantities as best I can remember, I think that at the first of March I believe it was eight and five. I believe the prorate was eight and five. I will say that by the time that fruit arrived that was shipped the first of March, it hit a much better market than the first of March.

Q. Isn't it true that the very lowest prices for the season during the past year were in the month of April?

A. Not according to my knowledge. I have January 10th to January 26th, \$2.57 to \$2.40 delivered, which was our general average most days.

Mr. Weikert: That is on a carton?

The Witness: Carton, yes. Then we hit a low spot the first of March for a week and then it jumped way up and then again in April it went down a little bit only for a very short time. [43]

Q. And isn't it true that in the month of April is when Southern California is in the market the heaviest?

A. But you have a very nice market starting after April when it goes to \$3.69 and you carry that market, from \$3.69 to \$4.00 until May 26th per carton delivered.

Q. Would you say an average of \$2.00 a carton is evidence of a good market?

A. No; we need \$2.25 f.o.b. per carton.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of William Luther Woodall.)

Q. You don't know that for the week ending the 14th of April the average f.o.b. price for Southern California navels was \$2.00 a carton?

A. I said that they had a bad week the first of April.

Q. Well, this is the 14th?

A. There was one week in there that dipped down on account of bad arrivals.

Q. You don't know that the very best prices for the entire season after the first of March for both Central California navels and Southern California navels was during the month of May?

A. I would say Southern California definitely you might have had occasional sales. But I think you are getting your information from delivered sales, not from people selling in the state, because you don't know what all the independents and different organizations are getting for theirs.

Q. I am getting my information on f.o.b. figures—— [44]

A. Furnished by the Sunkist people, what they are doing.

Q. Who market the largest percentage of this fruit?

A. But that doesn't indicate, as I explained before, what goes on with a close market or your state markets and places like Oregon and Washington, in there.

Q. Do you mean to tell me, Mr. Woodall, that you independents cannot compete with Sunkist?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of William Luther Woodall.)

A. I have always been able to or I wouldn't be in business.

Q. And your prices are just about as good?

A. We try to get a little more to the grower.

Mr. Griffin: I have no further questions.

Presiding Officer Gifford: Anything further of this witness?

Mr. Weikert: Just a few.

Redirect Examination

By Mr. Weikert:

Q. How do your operating costs compare with Sunkist's costs, if you know?

A. Well, it is much cheaper, I think.

Mr. Weikert: If you are going to have propaganda, let's have it on both sides.

Presiding Officer Gifford: Let's not have too much propaganda. Go ahead. [45]

Q. (By Mr. Weikert): Is it your testimony, Mr. Woodall, that on the average Central California produces better sizes and grades of navel oranges than Southern California?

A. Yes, much better sizes, greater.

Q. And does that explain the higher elimination from Southern California? A. Yes.

Mr. Weikert: That is all.

Presiding Officer Gifford: If there is nothing further, you may stand aside.

(Witness excused.)

Plaintiff's Exhibit No. 5—(Continued)

Mr. Weikert: That is all we have to offer.

Presiding Officer Gifford: Do you have any witnesses?

Mr. Griffin: Yes, sir, but Mr. Presiding Officer, before that I want to take up a few other matters.

I understand that Counsel for the Petitioner is willing to stipulate to a number of allegations that were made in the Answer pertaining primarily to the issuance of the Order, the hearing that was held and so on. I would like to check them with him and see if he is willing to stipulate as follows:

In the second paragraph it is alleged that:

“Respondent avers, however, that on August 5, 1953, the Secretary of Agriculture issued his decision with respect to a proposed marketing agreement and order regulating the handling of navel oranges grown in Arizona and designated part [46] of California (18 F.R. 4708), and that on September 16, 1953, the Assistant Secretary of Agriculture issued Order No. 14 to become effective on September 22, 1953 (18 F.R. 5638). Said Order No. 14 was thereafter duly amended, effective August 1, 1954 (19 F.R. 2941); and the compilation of said order, as amended, was published in the December 10, 1954, daily issue of the Federal Register (19 F.R. 8129; 7 CFR Part 914).”

Now Respondent asks if you are willing to stipulate to that.

Mr. Weikert: With the understanding that the stipulation is for the purposes of this proceeding only, I will stipulate.

Plaintiff's Exhibit No. 5—(Continued)

Mr. Griffin: That is understood, of course.

It is further alleged: “* * * all such provisions were fully justified on the basis of the records of the hearings duly called and held for the purpose of determining whether said order and the amendment thereto should be issued, and, if so, the provisions which should be contained therein. All procedural steps required by law were taken in issuing such order and amendment.”

May we have the same, or may we have that stipulation with the same understanding?

Mr. Weikert: With the understanding that all the stipulations for the purposes of this hearing only, I will so stipulate.

Presiding Officer Gifford: All of the stipulations you make will be just for the purpose of this proceeding, so you [47] will not have to repeat.

Mr. Griffin: It is further alleged:

“Order No. 14 was issued by the Assistant Secretary of Agriculture effective on and after September 22, 1953, following the receipt of evidence at a public hearing after duly published notice thereof, the issuance of a recommended decision with opportunity to file exceptions thereto, the issuance of a final decision, the execution of a marketing agreement by handlers of not less than 80 per cent of the volume of navel oranges covered by said order, and approval of the order by a referendum of producers, all of which was in compliance with the requirements of said act. Also, the required procedural steps were taken with respect to the

Plaintiff's Exhibit No. 5—(Continued)

issuance by the said Assistant Secretary of Agriculture of the amendment to Order No. 14 effective on and after August 1, 1954. Each of the aforesaid provisions is authorized by the act and was incorporated into the said order, as amended, by the Assistant Secretary of Agriculture on the basis of substantial evidence in the records of the respective promulgation hearings.”

Mr. Weikert: So stipulated.

Mr. Griffin: I believe that completes the stipulations.

I would like to call Mr. Coogan.

Whereupon,

M. T. COOGAN

was called as a witness by and on behalf of the Respondent, and [48] having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Griffin:

Q. Will you please state your full name, occupation and address?

A. M. T. Coogan, manager of the Navel Orange Administrative Committee.

Q. And what is the address of that Committee?

A. 117 West Ninth Street, Room 105.

Q. How long have you been working in that capacity or have occupied that position?

A. Since May 1, 1954.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. T. Coogan.)

Presiding Officer Gifford: You had better put on the record the city in which he lives.

Q. (By Mr. Griffin): Your office is in Los Angeles, Mr. Coogan? A. Yes.

Q. Prior to becoming manager of the Navel Orange Administrative Committee, what position did you occupy?

A. I was representative of the Fruit and Vegetable Branch of the U. S. Department of Agriculture in Los Angeles, California.

Q. And how long did you occupy that position?

A. That was May 1st, 1934.

Q. Mr. Coogan, have you prepared or have you had prepared under your direction and supervision an exhibit indicating the Domestic Fresh Shipments of Central California Navel Oranges?

A. Yes, I have.

Q. Will you describe briefly how this exhibit was prepared and what it contains?

A. This exhibit, this one was prepared by myself from the official records of our office and it shows the fresh fruit domestic shipments for the years 1944-1945 to 1950-1951 under Order No. 66. There are two years, namely, 1951-1952-1953, which, of course, have not been under any marketing agreement and there is no information available. And, for the years 1953-1954 and 1954-1955, as well as 1955-1956, under Order No. 14, there is the information for the period under which we have been presently operating under No. 14. This shows the

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

shipment by weeks for the season as well as the percentage of tree crop moved prior to January 1st and the percentage moved after January 1st for all of the years in question.

Q. And that latter information is on the second page, is it?

A. Yes, sir. In addition, we show the week for each year that the prorate was imposed and the week which started unlimited movement as recommended by the Committee, with the exception of 1944-1945, which was open movement to the whole season, which was unlimited shipments, and the year of 1950-1951 for which we have no available information because the records [50] were destroyed.

Q. Is the opening and closing of prorate indicated by the footnote, or footnotes 1 and 2 that appear on the exhibit?

A. Page 2, yes, sir.

Mr. Weikert: Pardon me, but just at this point I am not sure that I understand about the year 1944. I understood that Mr. Coogan said except the year 1944-1945 that these footnotes refer—I just want to get it clear.

Q. (By Mr. Griffin): Mr. Coogan, can you indicate, or rather, you indicated that there was no prorate in effect during the 1944-1945 period.

A. I meant to say 1945-1946.

Q. Was the information contained on this exhibit taken from the records of the Navel Orange Administrative Committee, Mr. Coogan?

A. Yes, sir.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. T. Coogan.)

Mr. Griffin: Mr. Presiding Officer, we would like to ask at this time that this exhibit be received in evidence and we have four copies available for you.

Presiding Officer Gifford: It will be identified as Exhibit No. 1. Are there any questions before it is admitted in evidence? Hearing none, it will be admitted in evidence.

(Respondent's Exhibit No. 1 was received in evidence.) [51]

Q. Mr. Coogan, have you prepared a similar exhibit showing the shipment of Southern California navel oranges? A. Yes, I have.

Q. Will you describe that briefly?

A. This exhibit is primarily identical to the one for Central California except that there is no explanation by percentages of the per cent prior to January 1 and after because it did not seem to be important.

Q. Isn't it true, as a matter of fact, that there are very few shipments from Southern California prior to the first of January?

A. That's correct, yes.

Q. The symbols and marks that you have discussed with regard to Exhibit No. 1 are the same on this exhibit, are they not?

Mr. Wiekert: Well, obviously they are not.

Mr. Griffin: All right.

Q. (By Mr. Griffin): Mr. Coogan, I note that on Exhibit No. 1, for example, you have a footnote

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

No. 3 at the top of the column relating to 1945-1946 shipments.

A. That is right.

Q. And you have Footnote No. 3 relating to the column entitled 1950-1951?

A. That's right. [52]

Q. Now that No. 3 footnote is not the same on both exhibits.

A. One is not available because during the Southern California navel season for the year 1945-1946 they did have prorate allotments.

Q. Now the mention or designation for the footnotes are indicated on the exhibits themselves, are they not? A. That's correct.

Mr. Griffin: We will ask that this exhibit be received in evidence as the exhibit next in order.

Presiding Officer Gifford: They are both entitled the same?

Mr. Griffin: No. One is for Central California and the other is for Southern California.

Presiding Officer Gifford: The one entitled "Southern California Navel Oranges Domestic Fresh Shipments" will be identified as Exhibit No. 2 and admitted in evidence.

(Respondent's Exhibit No. 2 was received in evidence.)

Q. (By Mr. Griffin): Mr. Coogan, have you prepared or had prepared under your direction and supervision, an exhibit that shows the comparative

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

tree crop fresh movement for Central California and Southern California for approximately a ten-year period? A. Yes, I have. [53]

Q. Will you please indicate where this information came from, and how it is set forth?

A. This information came from the official records of the Committee and the lower part that is for the year 1953-1954, including the present year 1955-1956, covers Order No. 14. The prior years are covered by Order No. 66, but that is not indicated on the exhibit although it is true. And it shows the amount of fresh fruit shipments for both Central and Southern California as well as the tree crop, by years, and appears, the percentage of the fresh fruit shipments as related to the total tree crop by years for both Central and Southern California. Now the footnote indicates shipments to the week ending June 3rd. Now this last year we stopped because we have had shipments since then. We have had nine cars for the week ending June 10th of Central California and 132 cars for the week ending June 10th out of Southern California, and we have had some 200 cars, or we have some 200 cars yet in Southern California to move this week and next.

Q. Why were not the figures available for the years 1951, 1952 and 1953?

A. At that time there was no marketing agreement and no information available.

Q. I see.

Mr. Griffin: Mr. Presiding Officer, we ask that

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

this be marked as the exhibit next in order and that it be received in [54] evidence.

Presiding Officer Gifford: This exhibit, entitled "Comparative Tree Crop and Fresh Fruit Movement, Central and Southern California, 1944-1945 to 1955-1956 Season," will be identified as Exhibit No. 3 and made a part of the record.

(Respondent's Exhibit No. 3 was received in evidence.)

Mr. Weikert: Just a question to clarify the record, if I may. My understanding is that these include shipments into the domestic fresh fruit market.

The Witness: May I add, which includes the United States, Canada and Alaska. That is the way the order reads.

Mr. Griffin: And it includes shipments into those areas when the regulations are in effect.

Mr. Weikert: Thank you.

Q. (By Mr. Griffin): Mr. Coogan, have you prepared an exhibit which indicates the attendance at meetings of the Committee by representatives of both the producers and the handlers from Central California and from Southern California?

A. Yes, I have. I prepared this exhibit myself from the official minutes on file in the office of the Committee and it shows the Central California members, and starting with October 26, 1955, the first meeting of the 1955-1956 season up to the

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

present date, showing the attendance which indicates the number [55] of handlers, which are four, practically all the time the Southern California and five from Central California. The number of growers from Southern California attending and the number of grower members from Central California attending is shown by the minutes.

Q. And on page 2 of this exhibit have you indicated who those representatives were?

A. Yes. Their names are all there—Do you wish me to read them for the record?

Q. No, I do not think that that would be necessary. I notice that Mr. H. A. Luallen served only until December 1st and then he no longer served, while the other representatives from Central California, most of them served on down through the month of January. Do you have any explanation for this?

A. My general knowledge is that Mr. Luallen at about that time withdrew or his packing company withdrew from the M.O.D. organization and they disqualified him as acting for their member on the committee, and Mr. Singer, who also had considerable acreage in Central California served in his place.

Q. Do you know whether Mr. Singer has substantially as much acreage in Central California as he does in the southern part of California?

A. It would be hearsay, but I have heard him

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

say several times that he has more in Central California.

Mr. Weikert: Well, it certainly is hearsay. But what I [56] was wondering is why his name does not appear if he is supposed to be a Central California representative.

The Witness: I did not say he was because he has always been considered a Southern California member and he is so listed on the other page.

Q. (By Mr. Griffin): Mr. Coogan, apart from what you have heard, don't the records indicate that Mr. Singer has as much acreage in Central California as he has in the south?

A. I think to get the real accurate answer on that, Mr. Hersey, I think that Mr. Hersey could answer that.

Q. Very well. Do you have anything that you wish to add with regard to this particular exhibit?

A. No, sir.

Mr. Griffin: Mr. Presiding Officer, we ask that the exhibit entitled "Representations from Central and Southern California on the Navel Orange Administrative Committee during 1955-56 Season" be marked as the exhibit next in order.

Presiding Officer Gifford: The document will be identified as Exhibit No. 4 and admitted in evidence.

(Respondent's Exhibit No. 4 was received in evidence.)

Mr. Griffin: Just to straighten the record, there

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

are two pages to Exhibit No. 1 and two pages to Exhibit No. 2. There is only one page for Exhibit 3 and two pages for Exhibit [57] No. 4.

Q. (By Mr. Griffin): Mr. Coogan, have you prepared an exhibit pertaining to the per cent of tree crop marketed in all channels, Lo Bue Brothers, Central and Southern California?

A. Yes, I have this exhibit. This exhibit shows, based on the records of the office, the amount that Lo Bue Brothers and Central and Southern California as a whole has shipped in regulated channels by express, by export, and the total fresh fruit. In addition, it shows for Lo Bue Brothers, Central California and Southern California the amount that each one of the three sent to products or otherwise disposed of, as well as the total tree crop moved by Lo Bue Brothers for 1955-56 navel orange season. It shows the total amount that Central California has moved as well as the Southern California.

Q. And was this information, or was this prepared from information from reports submitted to you by Lo Bue Brothers and other handlers?

A. That is correct, yes.

Mr. Griffin: We will ask that this be marked as an exhibit next in order and received in evidence.

Presiding Officer Gifford: The document will be identified as Exhibit No. 5 and admitted in evidence.

(Respondent's Exhibit No. 5 was received in evidence.) [58]

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

Q. (By Mr. Griffin): Mr. Coogan, based upon the shipping schedule which was in effect and which was adopted by the Navel Orange Administrative Committee, how many cars of navel oranges would Lo Bue Brothers have been able to ship between the date of April 6th and May 6th, 1956, had they remained on the prorate schedule and shipped their oranges subject to prorate?

Mr. Weikert: What were those dates again?

The Witness: I think it is April 22nd, Counsel, they were on the schedule and did ship April and received prorate.

Mr. Griffin: They did?

The Witness: Yes. No, it is from May 22nd—No, I am sorry, I have it wrong again—It is from April 22nd, for the week ending April 22nd to the 29th. They were through shipping but as they remained on the prorate basis and the allotment that the Committee recommended to the Secretary, they would have for that received 5,413 cartons. The following week, covering the period of April 29th to May 6th, had they remained on the basis and still held oranges, they would have received 6,095 cartons. And the following week from May 6th to May 13th they would have received 6,894 cartons. On the following week, May 13th to May 20th, they would have received 8,523 cartons. And, of course, after that period the prorate was lifted and they would have been free to ship whatever they wished.

Q. In cars what does that represent; have you computed [59] that?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. T. Coogan.)

A. It depends upon the number of cartons in a car, but if you use a thousand as a base, about 27 cars.

Q. Now you say that they actually completed their shipment sometime around the 22nd of April. What was the reason that they were able to complete their shipments that early when other shipments in Central California were not able to or I mean other shippers were not able to complete theirs?

A. Well, they simply filed a 15-A petition—excuse me, may I have that sheet? They filed a 15-A petition and during the peak ending April the 8th they shipped in addition to their allotment in excess of 25,416 cartons and the week ending April the 15th in addition to the allotment they received they shipped in excess of 6,848 cartons, or a total shipment in excess of allotments of 32,264. So for that reason they were able to complete their shipments at that time.

Q. Were there any periods in the fall of 1955 when the Navel Orange Administrative Committee recommended and the Secretary of Agriculture established open movement for navel oranges from Central California?

A. There were two weeks which they had actually where the Committee had recommended an allotment but due to the fact of the rain and the maturity they recommended unlimited movement, and for that reason those two weeks were

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

open during which anybody could ship as much oranges as they were able to [60] get out at that time.

Q. Based upon your experience in the orange industry over a period of many years, would you say the Central California shippers were restricted in any way as to the quantity of oranges that they could move prior to the first of January during this past season?

A. No, I would not say so. In fact, if they could have gotten out more, it would have been a great help to the whole industry.

Q. Mr. Coogan, do you attend all of the meetings of the Navel Orange Administrative Committee?

A. Yes, sir.

Q. Were you present at the meetings that were held during the months of March and April?

A. Yes, sir.

Q. Did Mr. Luther Woodall attend any of the meetings during March?

A. Mr. Woodall attended the meeting of March 15th and the meeting of March 29th, according to official minutes.

Q. Do you recall if anything was said by Mr. Woodall at the time that he attended these meetings?

A. On both occasions Mr. Woodall was asked by the Chairman for his comments with respect to the market and how much should be set for each district, as they do in the case of all observers. I

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

believe that on the first occasion Mr. Woodall [61] suggested that Central California received 75 per cent of the allotment and Southern California 25 per cent. He did on that occasion, as well as on the next occasion—and I cannot quote his exact words—that he was going to ship the fruit regardless of what the Committee did. The reason I am so sure of that is that after the meeting of March 15th, I instructed our Central California Office to watch Lo Bue Brothers' shipments on the theory that they were going to file a 15-A.

Mr. Weikert: Just a moment. I move to strike any conversation that Mr. Coogan may have had with his subordinates as hearsay.

Presiding Officer Gifford: I think that that is improper.

Mr. Griffin: Very well. However, your Honor, I think that Mr. Coogan has not testified as to any conversation but has merely testified as to action taken by his office.

Mr. Weikert: It is still hearsay.

Mr. Griffin: It is not hearsay; it is merely action taken.

Presiding Officer Gifford: As to how he bases his memory as to what was said, I realize that that part you can leave in, but the future developments as to what was said or done at that time will not be permitted.

Q. (By Mr. Griffin): Did you, Mr. Coogan, instruct members of your staff to make a careful

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

check of Lo Bue Brothers in Central California after Mr. Woodall appeared at this meeting? [62]

Mr. Weikert: Well, now, that is the same thing. Instructions have to be given either orally or in writing. If they are in writing, the writing is the best evidence, and if they are given orally it is hearsay.

Mr. Griffin: I am not asking him for these instructions; I am merely asking him if he gave them.

Mr. Weikert: Well, that calls for a conclusion as to what he said.

Presiding Officer Gifford: No, that is a fact as to what he did, and you can develop it if you want to. Objection overruled.

The Witness: I instructed the Central California Division through Mr. Hersey to check carefully the shipments of Lo Bue Brothers, both after the March 15th meeting and after the March 29th meeting. However, at the March 29th meeting, after the meeting was over I talked to Mr. Woodall and told him—or rather, that is, he told me first—he told me that he had a plan whereby he was going to ship all of his oranges. And I told him that it was my job to catch them if I could. In other words, it was my job as manager of the Committee that if he shipped in excess of the amounts of the allotments, I was to catch him, or it was my job to catch him through our investigating division. And he said, "Of course, I am not going to tell when I am going to do this."

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. T. Coogan.)

And I said, "I thoroughly understand that." And then we [63] both laughed about it and that was the end of the conversation.

Mr. Griffin: I have no other questions.

Presiding Officer Gifford: Do you have any inquiry?

Mr. Weikert: Yes, sir.

Cross-Examination

By Mr. Weikert:

Q. It is a fact, is it not, Mr. Coogan, that the percentage of tree crop marketed by Lo Bue Brothers as shown on Exhibit 5 as compared with the percentage of the total tree crop marketed reflects the over-shipments by Lo Bue Brothers?

A. Yes, sir, it does.

Q. Do you recall at any meeting of the Administrative Committee statements by representatives from Southern California that they, on behalf of the South, were going to see that Central California eliminated as much fruit as the South or approximately as much percentage-wise?

A. No, I think the general answer to that question could be that the statements made—and this is at no particular time—but the statements were made that the South should be able to ship their percentage as compared to Central California shipments.

Q. Nothing was ever said in your hearing by

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. T. Coogan.)

any committee member to the effect that Central California should eliminate percentagewise as much as Southern California?

A. There may have been statements made at the meeting but [64] I do not particularly remember.

Q. That is what I mean, do you recall any such statements made at the meetings?

A. I am fairly sure that it could have been said.

Q. Isn't it a fact that under this regulation and even during the present season that Southern California handlers can get all of the prorated allotments that they need to ship early maturity navels before January 1st or February 1st?

A. You mean if they applied for it?

Q. Yes. A. Anyone that applied got it.

Q. Anyone that did apply, they received it; is that right?

A. Yes, everyone that applied for it got it.

Q. And that would be up to as late as February 1st?

A. I do not remember this year, but I can get the record for you if you wish.

Mr. Weikert: I think that is all.

Mr. Griffin: I have no further questions.

Presiding Officer Gifford: If there is nothing further, you may be excused.

(Witness excused.)

Mr. Griffin: I will call Mr. Tyrrell.

Plaintiff's Exhibit No. 5—(Continued)

Whereupon,

RALPH R. TYRRELL

was called as a witness by and on behalf of the Respondent, and, [65] having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Griffin:

Q. Will you please state your full name?

A. Ralph R. Tyrrell, T-y-r-r-e-l-l, Route 4, Porterville, California.

Q. And what is your business or occupation?

A. I am an orange grower in Tulare County.

Q. And that is what has been referred to here today as Central California? A. Yes, sir.

Q. Are you a member of the Navel Orange Administrative Committee? A. Yes, I am.

Q. And did you serve as a member during the 1955-56 season? A. Yes.

Q. I believe the exhibit that was put into evidence shows that you did serve on that Committee as an active member to the month of January; is that correct? A. That's correct.

Presiding Officer Gifford: I think you had better put in some years along here.

Mr. Griffin: That is right. [66]

Q. (By Mr. Griffin): During the 1955-56 season commencing in the fall of 1955 and ending in 1956; is that right? A. That's right.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

Q. Mr. Tyrrell, are you member of the Board of Directors of Sunkist, Incorporated?

A. Yes, I am.

Q. And I assume that you market your fruit through the Sunkist organization? A. Yes.

Q. During the past season, Mr. Tyrrell, when you have served on the Committee, was there any group or organization in Central California that attempted to formulate policy for the Central California growers and shippers as far as recommendations to the Navel Orange Administrative Committee was concerned? A. There was.

Q. And what was that?

A. It was the Little Industry Committee.

Q. And who were members of this Committee?

A. A committee comprised of six handlers and the members of the Prorate Committee from Central California.

Q. Did that cover all segments of the industry, the independents and the other cooperatives that are shipping?

A. Yes, it did. It included two members from the Sunkist Growers, the Stark Packing Corporation, M.O.D., which is the [67] Mutual Orange Distributors, the National Foods, and all other independents. By that I mean that one man represented the other independents.

Q. And was it the custom of this Committee to hold a meeting in Central California each week?

A. It was.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Ralph R. Tyrrell.)

Q. And what was the purpose of those meetings?

A. The handlers got together and discussed the amount of fruit that they thought should be shipped from Central California and instructed the members of the Prorate Committee on their findings.

Q. So that when members of the Navel Orange Administrative Committee came down South from Central California, they did so with a recommendation from this Little Industry Committee?

A. That is correct.

Q. Now you served as a member on that Little Industry Committee, did you? A. Yes.

Q. What was the policy adopted by this Little Industry Committee in Central California with regard to the marketing of Central California Navel Oranges during this past season?

A. The Little Industry Committee recommended to the Prorate members that they prorate the fruit for a price and not as to volume. In other words, obtain a fair return to the grower for the amount of fruit shipped, rather than market all the fruit. [68]

Q. And would you say that it was primarily their purpose to get money for the crop rather than to market the entire crop?

A. That is the purpose.

Q. On occasion did the Little Industry Committee recommend lighter shipments for Central California than some of the other members of the

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

Navel Orange Administrative Committee thought should be made? A. They did.

Q. And to the best of your recollection what was the action that was taken by the Navel Orange Administrative Committee?

A. In most cases they took the recommendation of the Little Industry Committee or the representatives from Central California.

Q. Now you were present, were you, when Mr. Woodall testified here today? A. Yes.

Q. And you heard his testimony that there was a tendency on the part of the Navel Orange Administrative Committee to favor heavier shipments from Southern California just as soon as the large volume of the Southern California navel oranges came into the market?

A. I heard the testimony, yes. [69]

Q. And would you say, based upon your experience with that committee, that that was a true statement? A. No.

Q. And as a member of that Committee do you feel that the Navel Orange Administrative Committee gave every consideration to the policies that were adopted and made known to them by the Central California Navel Orange Growers and Shippers? A. I do.

Q. Do you know, Mr. Tyrrell, of anyone in Central California who was opposed to the policy as offered and followed by the Little Industry Committee?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Ralph R. Tyrrell.)

A. No one talked to me to the contrary.

Q. And so far as you know it was a unanimous decision to follow the policy of getting money for the crop rather than shipping all of the crop?

A. As far as I know.

Q. And that was true with regard to representatives from M.O.D. and from the independents and the American Foods, and all the rest of them?

A. That is true.

Q. Do you recall also, Mr. Tyrrell, whether or not representatives from Central California at meetings of the Navel Orange Administrative Committee didn't tell the Committee that they would much prefer to ship a smaller quantity of oranges and get a good price than to ship all of the oranges and not get a reasonable return? A. Yes.

Q. And isn't it true that that was discussed around the table many times? A. Yes.

Q. Was there anything unusual about conditions in Central California this past fall as far as shipments of oranges was concerned, Mr. Tyrrell, was there any bad weather, for example?

A. You mean the beginning of the season?

Q. The beginning of the season, yes.

A. Yes, the weather we had interfered with the maturity and we were not able to get out the volume. In other words, the rain interfered and we were not able to get out as much as the Prorate Committee wished that we could.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

Q. And was there any difficulty with maturity this year?

A. Yes, early in the season there was a great deal of trouble.

Q. Do you recall some of the reasons why, perhaps, you had more trouble with maturity this year than you have had in other years?

A. That is hard to determine, what caused the late maturity.

Q. Well, isn't it true that you were confronted with a [71] new State Maturity Law?

A. Yes, we were, with the color standards.

Q. And this was the first year that that was in operation; is that correct?

A. That is correct.

Q. And isn't it also true that there was some uncertainty among certain producers and handlers as to what it would be or as to how it would be applied?

A. Correct.

Q. So there was more caution, perhaps, than there was in other years?

A. There could have been.

Q. What, in your opinion, Mr. Tyrrell, is the normal shipping period for Central California navel oranges?

A. The normal time would be to start around November 8th or November 10th—it has been earlier and it has been later—but the normal time is about then and the closing period should be April

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Ralph R. Tyrrell.)

15th or not later than April 15th, in my opinion.

Q. Has there been any change in conditions either with regard to the volume of the crop or marketing conditions which might change the normal shipping season in recent years as compared to six or ten years ago? A. There was.

Q. What are some of those conditions?

A. The biggest determining factor in restricting our [72] shipments to maintain a satisfactory price during our marketing season is the competition from other areas.

Q. Do you recall, Mr. Tyrrell, that six to ten years ago you used to ship as high as 1600 to 1800 cars a week? A. I do.

Q. And has that been done in recent years?

A. No.

Q. Last year did the Committee experiment with shipping some rather large volumes in certain weeks?

A. Yes, in December there were large volumes, something like 1400 or 1500 cars per week.

Q. And what happened as a result of those heavy shipments?

A. It had a very, very depressed market that took eight weeks of restricted shipments to correct the market.

Q. And what would you say now is the approximate maximum as far as volume is concerned that can be shipped each week—and when I say “shipped,” I am talking about navel oranges—

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

without disturbing or causing a depressed market?

A. Well, I would think that during December 1200 cars would be it as the experience in the last two years would show.

Q. The exhibit Mr. Coogan put into evidence indicates that this year only 16.87 of the tree crop was marketed prior to the first of January, and that compares with other years as high as 81 per cent and 75 per cent or 72 per cent. Now, what, in [73] your opinion, was the principal cause of pushing the navel oranges from Central California into the late part of the month of April and May of this year?

A. That was because we lost during November and December 1500 to 2,000 cars which we normally would have shipped. I believe the figures are 2600 cars were shipped when we should have shipped 4,000 or better.

Q. And that left more than half of the fruit to go after the first of the year?

A. That is right.

Q. In fact, it left 73 per cent, did it not?

A. Yes, and you cannot ship it all in one week; it has to be strung out over a longer period of time.

Q. Now when you lose 1500 or 2,000 cars of oranges before the first of January, is there any way that you can recapture that or is that gone forever? A. That is gone forever.

Q. And what would have happened, in your opinion, if the some 2,000 cars that should have

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Ralph R. Tyrrell.)

been marketed before the first had been dumped onto the market during the months of January, February and March?

Mr. Weikert: That is objected to as being speculative.

Presiding Officer Gifford: If he knows.

Q. (By Mr. Griffin): Mr. Tyrrell, might I ask how long have you been an [74] orange grower?

A. For 30 years.

Q. And as a director of Sunkist, are you familiar with the markets and the prices obtained by producers for oranges? A. I am.

Mr. Griffin: I think that he is qualified.

Presiding Officer Gifford: Go ahead and answer the question.

Mr. Weikert: But nobody could possibly know what would have happened if something took place that did not actually take place.

Presiding Officer Gifford: I think your point might be well taken. But the general result historically may be determined, he may be able to determine that. I do not know if his experience would qualify him, but if he can answer, if he is qualified, he may answer.

Mr. Griffin: It ties in to the prior testimony about not being able to market a certain number of cars every week.

Presiding Officer Gifford: If it is already in the record, why put it in? Objection is overruled at this time.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

A. The Prorate Committee set up allotments for both areas of 1350 cars and then for 1300 for two or three weeks consecutively. Then the market dropped perceptively and they reduced it to a thousand cars in order to correct the market. That would answer the question that Mr. Griffin asked. [75]

Q. (By Mr. Griffin): Mr. Tyrrell, as a producer, what was the total over-all return that you received this year from your navel crop as compared to other years; was it higher or lower or about the same?

A. On the crop price for oranges in Tulare County it is one of the highest on record with the exception of one more year and it equalled that.

Q. In other words, it equals any year in history and is tied only by a year during the war; is that correct?

A. Right.

Q. As a producer of oranges, Mr. Tyrrell, do you think that it would be fair or equitable at all to require all of the other producers and handler of oranges to comply with the regulations or restrictions imposed under the marketing order and permit this petitioner to be exempt from those restrictions?

A. They must comply.

Q. Would it be fair to exempt them and let them ship all of the oranges that they wanted to and yet restrict the other producers?

A. No.

Q. I wonder if you can tell us just a little bit

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

about why that would not be fair, why it wouldn't be fair to let them ship all they wanted to.

A. Well, if one does it, the others should be entitled to [76] because otherwise then you have no prorate.

Q. Who makes the market in a situation like that? A. The growers and the shippers.

Q. And would you say that the restrictive shipments tend to make the market—I think as a matter of fact you have so testified?

A. Absolutely.

Mr. Griffin: I have no other questions.

Presiding Officer Gifford: We will take a short recess at this time.

(Recess.)

Presiding Officer Gifford: On the record. I believe that Mr. Tyrrell was ready for cross-examination.

Cross-Examination

By Mr. Weikert:

Q. How many acres of navel oranges do you grow, Mr. Tyrrell? A. Twenty.

Q. Are they all in Tulare County?

A. Yes.

Q. Have you ever been connected actively with any citrus selling corporation?

A. What do you mean by "selling," do you mean selling oranges?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

Q. Yes. [77]

A. I have been on the Board of Directors on our packinghouse and I am now on the Board of Directors of the Sunkist Growers, Incorporated.

Q. Have you ever had any sales experience yourself? A. No.

Q. Who were the members of this so-called Little Independent Industry Committee to whom you referred as representing all other independents? A. Theodore Roberts.

Q. And with what organization is he connected?

A. Independent Growers.

Q. What is Independent Growers?

A. That is the name of the packinghouse in Lindsay.

Q. Over what period of time were the meetings of this Little Industry Committee held?

A. We started, well, they started at the beginning of our season last November and ran through November, December and January.

Q. How many meetings were held altogether?

A. I do not have the record for sure but we met every Tuesday at 9:30 or 10:00 o'clock.

Q. And who was notified of these meetings?

A. All the members of the committee.

Q. Was Lo Bue Brothers notified of these meetings? A. That I can't answer. [78]

Q. Was Lo Bue Brothers represented on the committee?

A. I understood by Theodore Roberts.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Ralph R. Tyrrell.)

Q. Was Theodore Roberts connected in any way with Lo Bue Brothers as far as you know?

A. As I understand it, he represented other independents.

Q. Do you know who appointed him to represent the other independents? A. I do not.

Q. Do you know how he was selected for this committee? A. I do not.

Q. Do you know of your own knowledge whether anyone connected with Lo Bue Brothers knew of the existence of this committee? A. No.

Q. Are you, as a grower, have you had your final returns yet for your navel crop of 1955-56?

A. All but the last pool, which consists of approximately 25 per cent of the crop.

Q. So you don't know yet exactly how much you will receive for your crop, is that correct?

A. Very close, yes.

Q. But you do not know what the final returns are going to be?

A. I could tell you what it is going to be within a few cents. [79]

Q. In other words, 25 per cent of your crop has still not been reported, yet you know what the total returns are going to be?

A. I believe they have been sold because I talked to the packing house manager, yes. I know it's been sold.

Q. When you testified that your returns this year compared favorably with your returns for any

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

other year in the past, you were referring to the price received per box or per carton rather than the total return, were you not?

A. I said tree crop, which means total returns for the tree crop, total returns on the tree crop.

Q. Can you tell us what your return for the tree crop was this year?

A. My individual return?

Q. Your own individual return, because I understood you were testifying only about your own.

Mr. Griffin: Mr. Presiding Officer, I do not think that that is either pertinent or relevant as to how much return he received. The relative level of the return is what matters and unless Mr. Tyrrell particularly wants to or has no objection to giving the information, I don't think that that is relevant.

Presiding Officer Gifford: If he has objection to giving it, he will not be required to do so. But he has stated that he has only had the returns from three-fourths of his crop and one-fourth is yet to be determined. I think that it is a proper [80] inquiry to find out how he bases the total estimate if that is the point you are getting to.

Mr. Weikert: Yes; it seems to me that where a witness testifies that he has received as much this year or more for his crop than he has ever received before, I think it is proper to cross-examine as to the basis for that statement.

The Witness: That isn't the statement I made. The statement I made was that Central California

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Ralph R. Tyrrell.)

as an area, as a whole, has received more money than any other previous year except one, and it equalled that.

Mr. Weikert: Then either the witness or I misunderstood the question. My recollection of the question was, how did your returns compare with your previous returns?

Presiding Officer Gifford: Yes; that is a different question. But he has clarified it and explains that what he meant by his testimony and you can pursue it on that basis.

The Witness: I can give you figures for the entire area if you would like to have it.

Q. (By Mr. Weikert): Do you know the tree crop return for every grower in Tulare County?

A. No.

Q. Well, then, when you say, "entire," are you referring only to those growers whose fruit is marketed through your Sunkist organization? [81]

A. I referred to Tulare County, to Central California.

Q. Do you know how much the returns were of every grower in Central California? A. No.

Q. And how can you make the broad statement with respect to the returns for Central California this year as compared to other years; what are you basing it on?

A. The information is on the record of how many dollars have been received in Tulare County

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

based on the average of Sunkist Growers, Incorporated, the price they received.

Q. Then your testimony is related only to the Sunkist organization and not to any other grower, is that correct? A. That could be correct.

Q. I beg your pardon?

A. It could be correct.

Q. Well, it is not whether it could be; is it?

A. Yes.

Q. And does your testimony relative to the returns of growers marketing through Sunkist Growers, Incorporated, relate to packed fruit only or does it relate to fruit sold in other channels?

A. You mean the basis on which the return was based?

Q. I am referring to your testimony. When you say that you were testifying to the on-tree returns of Sunkist Growers in Central California, are you referring only to the on-tree [82] returns of packed fruit or the total?

A. The figures are based on packed cartons f.o.b.

Mr. Weikert: That is all.

Redirect Examination

By Mr. Griffin:

Q. You have lived in Central California for 30 years or more, have you? A. Yes.

Q. And are you pretty well acquainted and do you have a wide acquaintance among producers and

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

packers of oranges? A. I have.

Q. And would you say that it was pretty general knowledge last fall that this Little Industry Committee was operating? A. Yes.

Mr. Weikert: Just a moment. I certainly object to that as calling for a conclusion. It does not make any difference how general the knowledge was, if everybody didn't know.

Mr. Griffin: Very well. I will rephrase it.

Presiding Officer Gifford: I think you might do that.

Q. (By Mr. Griffin): Mr. Tyrrell, was the action of this Committee a topic of conversation among packers and producers last fall?

Mr. Weikert: I will object to that as calling for a conclusion and no foundation having been laid. This is a 20-acre producer and how is he going to know what everybody is talking about? [83]

Presiding Officer Gifford: He can describe what publicity was given by this Committee. That is the inquiry that he is trying to make.

Mr. Weikert: Well, that is all right.

Mr. Griffin: I think, your Honor, that it is proper to ask this witness whether or not based on his acquaintance it was a topic of conversation among packers and growers as to the operation and function of this committee. That fact is a fact that exists and it is not a conclusion at all. He had these conversations and he is widely known in the area and he can testify as to it.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Ralph R. Tyrrell.)

Presiding Officer Gifford: Unfortunately I do not agree with you. I think that if there was any publicity that the petitioner might have known about or if there is anything to show that he reasonably could have received notice of the committee, then I think it would be perfectly permissible.

Mr. Griffin: Very well, your Honor.

Q. (By Mr. Griffin): Mr. Tyrrell, do you know whether there was anything published in any of the papers up there with reference to the action of the committee? A. No.

Q. You don't know whether there was or not?

A. No; I do not know.

Q. Mr. Tyrrell, was the meeting of this committee open to [84] anyone other than the members?

A. Yes.

Q. Was it well attended by others, by packers and handlers other than those that were members of the Committee?

A. No; other than the Committee, no.

Q. But there was no restriction against their attending? A. I know of none.

Mr. Griffin: No other questions.

Mr. Weikert: No further questions.

Presiding Officer Gifford: If there is nothing further, you may stand aside.

(Witness excused.)

Mr. Griffin: I would like to call Mr. Seares.

Plaintiff's Exhibit No. 5—(Continued)

Whereupon,

H. L. SEARES

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Griffin:

Q. Will you please state your full name, Mr. Seares? A. H. L. Seares.

Q. And what is your address?

A. 117 West Ninth Street, Los Angeles.

Q. And what is your business or occupation, Mr. Seares? [85]

A. I am Field Manager for the Navel and Valencia Orange Committee.

Q. And how long have you occupied this position, Mr. Seares?

A. I have been with the Committee—with the Committee or as Field Manager?

Q. Field Manager for the Committee.

A. Fifteen years.

Q. And when you say 15 years, you refer to the work with the present Committees and with your work with the Committee organized under Order No. 66 as well as the new Order No. 14?

A. That is right.

Q. And prior to the time that you had this position as Field Manager, Mr. Seares, what was your occupation?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of H. L. Seares.)

A. I was Assistant Field Manager for about the same period. I started with the Committee in January, 1934, and then about 15 years ago I was made Field Manager.

Q. Are you familiar, generally, Mr. Seares, with the production of oranges in Central California and Southern California? A. Yes.

Q. Briefly stated, what is the function of the Field Department of the Committee?

A. Well, our principal function is to set over all crop estimates for both varieties in the different pro rata districts [86] and later to adjust or try to adjust shipment estimates in conformity with the over-all estimate to measure fruit and give the committee an idea of the size and percentage of each size that they expect during the season. Also at intervals during the season—every 30 days, to be exact—to measure, to keep track of the rate throughout the season.

Q. Are any opinions expressed to the committee as to how long a crop might keep or whether or not there will be substantial loss during any particular period?

A. Oh, on occasions, yes, when we have had field conditions such that would affect the crop output, that is always reported to the Committee.

Q. And those reports are based upon personal examination of oranges in the field by you and your staff? A. That's correct.

Q. Based upon your experience, Mr. Seares,

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of H. L. Seares.)

would you say that there is any substantial difference in the keeping qualities of navel oranges produced in Central California and navel oranges produced in Southern California—I am referring to a general proposition?

A. Oh, the average, well, taking it for either period, taking the time from which the oranges first begin to test, normally Central California oranges test four to five weeks before Southern California. So you always have that difference between conditions of the fruit throughout the season. [87]

Q. Apart from the fact that they mature at different times, they will keep and can be marketed during approximately the same period?

A. That is my opinion.

Mr. Griffin: I have no further questions.

Mr. Weikert: No questions.

Presiding Officer Gifford: If there is nothing further, you may step aside.

(Witness excused.)

Mr. Griffin: I will call Mr. Street.

Plaintiff's Exhibit No. 5—(Continued)

Whereupon,

M. D. STREET

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Griffin:

Q. Will you please state your full name?

A. M. D. Street.

Q. And do you live in Los Angeles?

A. Yes.

Q. What is your business or occupation, Mr. Street?

A. I am Assistant Treasurer of Sunkist and head of the Market Research Department.

Q. Mr. Street, have you prepared or have you had prepared [88] under your direction an exhibit that shows in graph form the quantity of navel oranges marketed from Central California during past seasons?

A. Yes; I have.

Q. Would you please tell us where this information came from and what the exhibit purports to show?

A. These two charts, which we are entering as exhibits?

Q. Well, we are talking about Central California only now.

A. This exhibit is only a picture of the data shown in an earlier exhibit, No. 1, entered by Mr.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

Coogan. Sometimes it is easier to tell from a picture what happens than it is from the individual figures. If you'd like me to discuss this a bit, I can.

Q. I was going to ask you if there was any comment that you wish to make regarding the change in the pattern which appears on this exhibit, particularly with regard to 1955-56 and the last few years as compared to the pattern which is shown for the five-year average?

A. In discussing this exhibit I would also like to use some actual figures from Exhibit No. 1, because they are the same thing, one being a picture and the other is the actual figures. I'd like to call attention to the three lines on this chart. First, the line made up of dashes and dots, which is the average of the data shown in Exhibit 1 for the five-year period, namely, [89] 1946-1947 to 1950-1951. It is clearly seen from this chart what has earlier been stated by other witnesses, that during this period that it was normal for Central California—if we can use the word “normal”—to finish substantially their shipments about the first part of February. That was not only typical of this five-year period but any other period you want to take all the way back through the 1920's or 1930's or 1940's. So certainly I would say it has been normal over a long period of time for Central California to conclude their shipments early in February.

And that was true for a perfectly good reason.

Q. I might interrupt you, Mr. Street, before

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

you go into an explanation of that. I might ask you, how long have you been associated with Sunkist?

A. Since early 1939.

Q. And what is the nature of your work and what is your education background as far as it deals with agriculture or economics?

A. I graduated in mathematics, Mr. Griffin, and completed all of my work for my Doctor's Degree at the University of California in Agricultural Economics.

Q. Have you been head of the Research Department at Sunkist during the entire time of your employment there? A. Since about 1940.

Q. Very well, now, will you please discuss the pattern [90] which is shown for the three-year average and for 1956 and tell us, if you can, what explanation there is for the differences in these patterns?

A. Before going to the line made up of dashes, also shown on this chart for 1953-1954, there is a 1955-1956 or the solid line depicted for 1955-1956. And I would like to describe a little bit why it was normal for Central California to finish their shipments early in February.

During these early years, up until about 1948 or 1949, as a matter of fact, the average weekly shipments which it was possible to make of California-Arizona navels and for which a good return could be obtained, was approximately 1,800 to 2,000 cars. So that the simple arithmetic of the thing, there

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

were tree crops in Central California, ranging anywhere from 10,000 to as high as 15,000 cars, they could complete their marketing by early February and receive a good return. It is just as simple as that. Just arithmetic.

That does not mean in my opinion that it was necessary to conclude the marketing of the crop because the fruit wouldn't keep any longer. It simply meant that you had so many cars that you had to ship. And if you had, for example, 12,000 cars, you could ship in six or seven weeks and you could conclude your shipments.

Now, to go back——

Q. Pardon me, but might I ask at this point, Mr. Street, [91] if it wasn't also a practice in Central California to try and get the fruit off as early as possible in the year because of possible freezes?

A. Well, that has always been true and still is the desire to do that, because after the first of the year there is always an extreme frost hazard as far as the growers are concerned and they like to have all of the crop marketed before frost if they can.

Q. And to the extent that the market will take the fruit, there is an incentive for them to do it at that time rather than hold it and try to market it?

A. That is true, and it was true then and it is true now.

There has been some discussion about normal and what was normal in 1930's and 1940's is quite a different thing than what is normal today, and dur-

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

ing the 1950's. I would say that during the 1950's a lot of things have happened to change this normalcy. I think that that is what we are here about.

I would like to call your attention specifically now to the dotted line illustrating the data given on Exhibit No. 1 for the latest three-year period, namely, 1953-1954 to 1955-1956. It is quite clear that the season, instead of finishing early in February as happened for so many years, now that in this period that the shipments go all the way through March and even into April with very small shipments even extending into May, but not very [92] much.

Now, there are perfectly good reasons for that situation, and in my opinion that is a normalcy at the present time and is likely to be the normal situation for the next foreseeable period.

That has been brought about by, well, primarily not by a change in the keeping quality of the fruit on the trees, but by a change in the market as to how much can be shipped each week and at a price that will return any money back to the grower. What has happened then between this early period when the normal situation was to finish in the first or second week in February, finish marketing the major portion of their crop, and now where a normal situation can be considered to finish in April or maybe even in May, has been brought about primarily by the fact that the market for California-Arizona navel oranges is no longer 1,800 to 2,000

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

cars a week. If that were true, then we wouldn't in all probability be here discussing this problem. What has happened is that there has been a development of a new product beginning some time in about 1948. Now this new product everyone is familiar with is orange, frozen orange concentrate.

Further, Florida has increased its production of oranges in the last 15 years from about 50,000 carloads to 250,000 carloads. These oranges are all harvested and marketed during the navel orange season. Now that is the big change. There is this great amount of cheap oranges—and they are [93] cheap—and, as I say, they are all harvested and marketed during the navel orange season. That is the big change that has taken place.

Now each week during this period depicted here on this graph there is being marketed in the U. S. and Canada and Alaska, the equivalent of about 3,500 carloads of oranges in cans, the major portion is frozen orange concentrate and other natural strength orange juice. In addition to 3,500 cars each week there is being marketed from Florida in fresh oranges about 1,500 carloads a week on the average. I mention average because during the Christmas market Florida gets up to as high as 3,000 or 4,000 cars a week. So that as a result of this tremendous competition of some 5,000 carloads a week each and every week during this season, it is no longer possible to ship 2,000 carloads of California-Arizona navels and get any returns back for them at all.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

As a matter of fact, it is my opinion based on my service on the Orange Committees and my job as head of market research at Sunkist, that if any such attempt were made that you would not even get back your freight returns. So there is a real problem in economics which has brought about this change in what is normal.

We can look briefly at this particular year in question. In 1955-1956, which is shown on this chart as a solid line, I call your attention to this solid line up to Christmas. The [94] total shipments for Christmas this year has been pointed out as 2,600 carloads. Now, that is not much different from what it used to be in one week. And when you take this 2,600 carloads away from the total shipments of 12,289 shown on the exhibit, means that almost 10,000 cars move after Christmas when we used to almost complete shipments in some years by Christmas. So in this year the calendar wouldn't even permit the shipments to be finished under what used to be considered normal even if nobody had any navel oranges except Central California. In this case you would have this change whether or not there was a prorate or not.

Q. Would you think that this is a condition that will probably prevail in the future as well as during the past year or few years?

A. As a matter of fact, Mr. Griffin, I expect the situation to be accentuated because the outlook based on the new acreage that has been planted in

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

Central California, there is considerable new acreage and increased bearing surface, that the tree crops in that area instead of being 12,000, 13,000 or 14,000 cars, as they now are, are likely to increase up to 20,000 carloads. So with that outlook for the future I would say that the normal situation may not even be this way, but the season might be extended even further to what it is now. It is a change in the economic situation, Mr. Griffin, that has brought about this change in what might be called normal— [95] using the word “normal” loosely.

Q. In the past, Mr. Street—I am referring to Mr. Coogan's Exhibit No. 3, sir—in the past it indicates that Central California has marketed, for example, 86 per cent, 90 per cent, 88 per cent or 85 per cent of their crop in fresh fruit channels during the past 10 years, approximately. Do you feel as a result of this change in economics and this change in the pattern of marketing that possibly there will be a change in the percentage of fruit that can be marketed from Central California in fresh fruit channels?

A. Mr. Griffin, that involves a lot of factors. Unless the demand increases through increased population, things of that kind, or the oranges in Florida disappear, for instance, why that would be the only result possible if these other things should happen.

Q. Is the production in Southern California re-

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

maining static or is it decreasing to make a place for the increased production in Central California?

A. Let me answer that in this way: The production in Southern California has declined from about 35,000 carloads until the present time I would estimate on the average that we could expect production of around 15,000 carloads. Now the outlook for the next five to seven years would be that that decline would not continue very much. It might go down maybe another thousand or 2,000 carloads at the most because the [96] declines that have been made primarily have been in the urban areas where the land was of more value for homes and industry. But the acreage that is left, the major part of the best production areas is in Riverside, Redlands, Highland, Corona and it is not likely that there will be much of a decline.

Q. Well, would you say the declines that have been made in Southern California in view of your testimony on the economics of the situation have helped to alleviate the problem that otherwise might have arisen in the marketing of Central California fruit?

A. Well, that certainly is true. As a matter of fact, where it used to be normal to have Central California conclude the crop by the first of February and this year just past there was marketed after the first of February perhaps as much as five or six thousand carloads as shown in the exhibit. So that has moved in and has taken part of the market

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. D. Street.)

that was normally filled by the Southern California crop. So that has been greatly eased by the fact that there is this reduction in the Southern California crop.

Q. Mr. Street, have you prepared a similar graph covering shipments of navel oranges in fresh fruit channels in Southern California?

A. Yes; we have that also as an exhibit.

Q. And that was based on Exhibit No. 2 which Mr. Coogan prepared? [97]

A. That is correct.

Q. Are there any comments that you wish to make with regard to the patterns shown by this graph?

A. Mr. Griffin, with this very revolutionary change in the weekly market for navel oranges, where the market, or, rather, where the demand declined from perhaps an average 1,800 to 2,000 cars a week to what is generally considered by the members of the Navel Orange Committee and marketing agencies as being perhaps 800 to a thousand cars a week or about half what the demand used to be, it has been necessary to modify not only the pattern in Central California by extending their season, but it has also been necessary to extend the Southern California navel orange season also.

In this exhibit, this chart which we have just mentioned, there is shown three lines similar to those that were in the one earlier that I discussed for Central California.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

Now, the five-year average, 1946-1947 to 1950-1951 shown by the dash and dot line, and the three-year average 1953-1954 to 1955-1956, is shown by the dash line, and data for the single year 1955-1956 is depicted by the solid line, and I think that it is indicated quite clearly what the pattern is.

Q. When the large volume of oranges marketed in prior years, for example, as shown by the five-year average there, Mr. Street, during what months?

A. The highest marketings were made in February, the [98] latter part of February and through March, but the biggest decline from the earlier period to the present time has been during February and March.

Q. And now during what period, or might I ask during what period for the year 1955-1956, for example, were the large volumes of marketings made?

A. The heaviest marketings made there were made as indicated on the Exhibit No. 2 and this chart during April.

Q. And rather substantial marketings were made also during the month of May, were they not?

A. In this season I believe that the records would show Southern California shipped a greater proportion. I am sure that they did, I don't believe—I am sure that they shipped a greater proportion after April 1st than they have done in history.

I would like to comment a bit more on that. Looking at Exhibit No. 2 at the actual figures after April 1st there has been shipped out of the total amount

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

during the season of 1955-56, a total of 13,632, which is about half or about 50 per cent. Now, over a long period of time it has been typical of Southern California movement that by the first of April that 65 per cent or 70 per cent would be moved and that after that time there would remain around 30 per cent to 35 per cent that would move. So that there has been a definite extending of the season in Southern California as well as in Central [99] California.

Presiding Officer Gifford: That figure you referred to, are you referring to cars?

The Witness: That refers to carloads, yes.

Q. (By Mr. Griffin): And would you say that this change in the so-called marketing normal, Mr. Street, has been brought about by the same economic conditions that you described in discussing the graph covering shipments from Central California?

A. I would say so, Mr. Griffin. And to try to make this a little clearer, in attempting to make this as clear as possible, if we take the figures on Exhibit 1 for the entire season for each of these years shown and add to them the season figures shown on Exhibit No. 2—that is, add together Central California and Southern California—you can get the totals. And I would like to mention a few of these totals:

In 1944-1945 total shipments from the two areas shipped in regulated markets was 40,227 cars. The next year, 1945-1946, in this period when the de-

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

mand was not affected by this frozen orange concentrate, it dropped to 31,593 cars. There was not even any need for prorate in that case because it was considered such a small volume that you could market almost 2,000 cars a week. The next year, 1946-1947, 34,963 cars. The next year, 1947-1948, was 32,695. And at this time we get a change in the whole economic situation.

In 1948-1949, those of us that are in the citrus business [100] will remember that we had one of the worst freezes in history, certainly the worst since 1936-1937, and there were only 18,632 cars shipped from both areas combined. Then the next year, 26,451 from both areas in 1949-1950. Then in 1950-1951, 26,755. And then we do not have the figures for 1951-1952 and 1952-1953 because there was no agreement.

Now the last three, the latest three years shown where there is an entirely different situation, the total volumes marketed in the two areas combined as follows:

The first year being 1953-1954, total of 23,166 cars. Next year, 25,039 and the latest year, this year, 1955-1956, was 25,921. Now there are about 25 weeks during the navel orange season from both districts which is about from the middle of November until about the middle of May, and the exhibits clearly show that. There are about 25,000 cars, which is about what the market has developed to be, so that means an average shipment of about a thousand

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. D. Street.)

carloads a week through the 25-week period. Now there are some weeks when you can ship more and some weeks when you cannot ship as much, but the average would be about that.

Now this season just closed, there was 13,500 tree crop in Central California, and 17,000 cars in Southern California, which is 31,500 cars. It is clear that there is a problem when you have got five or six thousand cars more than the market will absorb at a price that means any return to the [101] grower. Later on, Mr. Griffin, we have some testimony as to what happens to prices when you try to ship 1,800 or 2,000 cars, I mean when you try not to make them at 1,800 or 2,000 but try to ship 1,300 for several weeks.

Q. Mr. Street, before you go to that, do you have any further comments that you wish to make regarding the graphs that have been prepared on shipments of navel oranges from Central California, and Southern California particularly as that relates to what is normal today as compared to what was normal four, five or six years ago?

A. I think not, Mr. Griffin.

Mr. Griffin: Mr. Presiding Officer, we would like to ask that the graph covering the shipments from Central California be marked as the exhibit next in order. I believe that would be No. 6.

Presiding Officer Gifford: That is right, and that will be identified and admitted in evidence as Exhibit No. 6. That is the graph portraying the mar-

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

keting in Central California or from Central California.

(Respondent's Exhibit No. 6 was received in evidence.)

Mr. Griffin: And we would also like to ask that the graph portraying the marketing from Southern California be marked for identification as No. 7 and be admitted in evidence. I believe that Mr. Street has already identified that fully. [102]

Presiding Officer Gifford: Yes. That will be all right, and that will be identified as Exhibit No. 7, the graph showing weekly domestic navel shipments from Southern California for selected periods. That will be identified as No. 7 and received in evidence.

(Respondent's Exhibit No. 7 was received in evidence.)

Q. (By Mr. Griffin): Mr. Street, have you also prepared or had prepared under your direction and supervision an exhibit comparing prices which were received for navel oranges from Central and Southern California during the period since the marketing Order No. 14 has been in effect?

A. Yes; I have, Mr. Griffin.

Q. Would you indicate where this information came from and what the exhibit purports to show?

A. This information presents average f.o.b. prices received by Sunkist growers for each week from the week ending March 3rd to the week ending

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

June 2nd for the three latest seasons available, namely, 1953-1954 through 1955-1956.

Q. Is there any explanation that you can give as to why there is a difference, a slight difference in the price that is received or that has been received for Central California navels as compared to Southern California navels in 1955-1956 and indicate why the same or comparable differences are not [103] apparent or do not exist in the other two years?

A. Mr. Griffin, there are certainly reasons why prices are what they are and there are reasons why there are differences in the weekly average prices received by Sunkist for navel oranges sold from Central California and those sold from Southern California. In the 1955-1956 season throughout March and April the price differential which Southern California oranges brought over Central California navels was about 25 cents. The figures, just to quote a few: 24 cents, 17 cents, 23 cents, 20 cents, 19 cents, 29 cents, 25 cents, 24 cents and 23 cents. In other words about an average of 25 cents throughout this period. Then during the month of May that increased to about 32 cents or 33 cents.

Now I don't think that anyone, Mr. Griffin, can say exactly why these differentials existed but they did exist throughout this period in favor of Southern California navels.

Q. Do factors such as sizes produced in one area

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

as compared to those produced in the other area enter into prices that are received?

A. Well, there are a number of factors, Mr. Griffin. Generally speaking, the sizes of navel oranges in Central California are larger than in Southern California and at times bring a premium for that reason. Also, it is the general eating quality that causes our navel oranges to sell at the excellent prices that they do. It depends on relative [104] supplies, the sizes or the oranges, and the general eating quality and the general appearance, and all of these factors that actually determine these differentials.

I would like to emphasize that this differential in this particular season prevailed for quite a long period and it didn't just happen over the first of April or some other period; it prevailed through March and certainly the quality was excellent in Southern California.

Now if we look at 1954-1955, you will find that the reverse situation is true of Central California navels bringing a substantial premium over Southern California oranges. In the week ending March 3rd, you will see that it was \$2.48 as compared to \$2.08, which is 40 cents more for Central California oranges. The next week it shows a plus 20 cents, the next week the same, the next 20 cents, the next week the same, the next week the same. The week ending March 31st Central California shows five cents plus. On April 7th as the season gets later, Central Cali-

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

ifornia was still \$2.61 as compared to \$2.38 for Southern California. The next week it was \$2.68 over \$2.47. The next week \$2.88 over \$2.51, and the week ending April 28th, it was \$3.00 as compared to \$2.48. So there again it is indicated that they consistently brought a premium.

So in considering the factors responsible for that size was certainly one general condition and also the eating quality would be another. As I say, it is hard to measure what they are. [105]

If you will look quickly then at 1953-1954, you will see that the prices are very close together, and there is almost no difference. So, Mr. Griffin, the fact that there is a differential in any given week for navel oranges sold from one area as compared to another depends on many things and it is difficult if not impossible to reach a conclusion as to what one factor would be the cause.

Q. Would you say another significant part of the exhibit is to show that where a differential exists, usually the differential prevailed during an entire season which indicates that it must be due to factors that prevailed also throughout an entire season? A. I think that is true.

Q. Mr. Street, did you prepare a similar exhibit relating only to the 1955-56 season?

A. Yes; I have, Mr. Griffin, and it shows the same figures for 1955-1956 as we have just discussed on the present chart but in addition it shows the volume of oranges sold from each area during each

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

week, and that is the only purpose of making this additional exhibit.

Q. Mr. Street, have you prepared an exhibit that pertains to the over-all on-tree returns which producers in Central California affiliated with the Sun-kist organization have received during the past season? A. Yes; I have. [106]

Q. And have you made a comparison of those returns with the returns received in 1953-1954 and 1954-1955? A. Yes; I have.

Q. Do you have any comment that you wish to make regarding these?

A. Yes; I do. In order to compare results to producers in these three years, the most recent three years, we have taken the best and most reliable data which was available. It isn't possible to go out and find out from each individual grower how much his returns are, because all of those returns are not received yet and it couldn't be done anyway. But we do have a basis that we feel will give extremely reliable results.

In this table we have prepared, we show in column 1 for each of the latest three years the total number of standard carloads shipped in regulated outlets only. That is for the U. S. and Canada and Alaska. These figures, respectively, are: 11,509, 13,304, 12,289, ending in 1955-1956. Then in column 2—excuse me, I would like to go back to column 1. Those are the official figures from the records of the

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

Navel Administrative Committee so there is no guesswork or any estimating about those.

In column 2 the figures are shown as on-tree price for these volumes shown in column 1. Now there is some estimating done there that I would like to explain so everybody can draw [107] their own conclusions as to validity. We have taken the average f.o.b. returns for all packed and loose navel oranges sold for the entire season in each of these seasons and for the 1955-1956 season through the last possible date. Anything not included in that would not change it over a penny or so but I wanted to explain that that is partly estimated but probably not for more than over a penny. We have taken the Sun-kist average f.o.b. prices as a base, and from those we have subtracted California Citrus League costs for picking, hauling, packing and Sunkist's costs of selling and advertising.

Q. What do you mean by the California Citrus League costs, Mr. Street?

A. Those are costs that have been compiled by the joint efforts of factors in the industry such as farm advisors in the various counties that have worked on this program. The California Citrus League is a joint industry program of all factors that have been used for two purposes primarily, one traffic cases to help maintain a fair freight rate situation and the others to obtain the best cost factors possible. Those picking and hauling and packing costs are obtained from quite a large number

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

of houses, certainly a representative number of houses, and are considered by everyone to be very representative of the entire industry. As a matter of fact, they are the only cost figures that are available and they are used and accepted as official figures by everyone. [108]

So, from Sunkist prices we have subtracted these costs in order to arrive back at the amount of money per box which the grower would receive as his check for his returns.

Q. This is on a per carton basis?

A. I am sorry if I used the word "box." Yes; this is on a per carton basis. This is the first year we have used the per carton figures and I still when I talk sometimes use the term "boxes."

So that the only estimating that is involved in here primarily is that they are estimating f.o.b. prices received by growers outside of Sunkist growers—which by the way represents about 30 per cent or a little under 30 per cent of the navel orange crop—are the same f.o.b. prices. Now maybe that is a little different but it would not change the result very much, certainly, and if it did, it would not be a significant amount. So multiply the volumes from the Administrative Committee's figures shown in column 1 by the on-tree prices here shown in column 2 as I have described and you arrive at the figures shown in column 3 which, in my opinion, would very closely approximate the net grower returns on the tree which he gets.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. D. Street.)

Q. You have shown those figures, Mr. Street, there for three seasons, the 1955-1956 season showing the largest on-tree returns to the producer. Do you know how that figure for the 1955-1956 season compares with the years prior to 1953, 1954, which are not shown here? [109]

A. These figures which show the latest to be \$15,600,000 far exceed most of the previous years. In one more year where everything was extremely favorable and there was a large crop and there were not enough food in many places and we were still on rationing, I believe it was the year 1944-1945 when those things prevailed, the returns on tree were approximately the same. But with that exception by far it is the best year we have ever had.

And, Mr. Griffin, I would like to emphasize that that to me is a miracle in view of the fact that as of January 1st California suffered one of the worst disasters in having marketed such a very small percentage, only 2600 cars up to Christmas, the figure that we talked about earlier. It is generally conceded that that is about the worst situation that has ever happened to Southern California in the history or in the memories of anybody that I have talked to about it. And one other thing that I would like to comment on concerning that subject about this season being favorable, and that is that this 2600 cars up to Christmas, that was not affected

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

by the Orange Administrative Committee because in the early weeks——

Q. Before you go on, might I ask, are you a member of the Orange Administrative Committee?

A. Yes, I am.

Q. How long have you served on that committee? A. Since 1949. [110]

Q. That is, you have served as a member of the old Orange Administrative Committee and now you serve as a member of the Navel Administrative Committee?

A. Yes, since 1953-1954. So that I think that that was the most desirous, and the committee was very desirous to know as much about the factual information as possible. And the facts are that in the early weeks of the Central California season the Navel Administrative Committee had nothing to do with the situation because it was possible for all shippers in Central California to ship as much fruit as they pleased; all it was necessary for them to do was to ask for an early maturity and it was granted. And it is also a fact that all of the early maturity requests were granted. Also, there were two weeks in December that were considered the best weeks and that was all under open movement. So that the Committee only put restrictions that had any effect whatsoever in the two weeks closest to Christmas. In other words, at a period as to which it was impossible to ship or-

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

anges out of California and reach the Eastern markets. And when there is no control on shippers and too much fruit is shipped and it arrives in the Eastern market say on December 24th to December 27th, it simply will sit on the track and all you draw is demurrage and it results in disaster to the growers. So it is generally felt by everyone that there was no restriction put on anybody on the oranges that they moved up to Christmas with the possible exception of a few [111] cars in the dead spot after the holiday season.

Q. In your opinion, Mr. Street, was the fact that only 2600 cars were marketed before January 1st in Central California the principal contributing factor for the lateness of the season as far as Central California was concerned this year?

A. The principal contributing factor of, for the lateness of the Central California and the latest season that Southern California navel shippers had ever had, it would be the principal factor for both.

I would like to say one thing more, Mr. Griffin, and that is that the only thing that saved this from being a disastrous season which it started out to be as a result of late shipments brought about by maturity and weather, was a disaster in Spain. Spain lost virtually the entire crop on the trees about the first of February which opened up foreign market areas for the Arizon Valencias and Central California Valencias as well as Southern California

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

Navels, which made it possible to market 3300 carloads of Southern California navels after the first of May, which is a thing that is unknown in the industry before.

Q. Were you serving on the Navel Administrative Committee during the entire 1955-1956 season?

A. Yes.

Q. Were you present at the time that Mr. Tyrrell testified here today?

A. On his regular testimony, I wasn't here during all of [112] the cross-examination.

Q. But you were here during his direct examination? A. Yes.

Q. Would you say that his testimony to the effect that the Navel Orange Administrative Committee generally followed the recommendations made by the Little Industry Committee was correct?

A. My recollection, Mr. Griffin, is that the Navel Orange Administrative Committee followed those recommendations almost to the car through about the month of February.

Q. Do you recall, Mr. Street, representatives from the Central California area making the statement to the Navel Orange Administrative Committee on repeated occasions that they wanted to get a price for the oranges rather than to market the entire crop?

A. Well, that is the statement that has been made at so many meetings throughout the season, Mr.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

Griffin, I do not remember which one, but it has been made numerous times by the California-Arizona representatives, and the statement I think is concurred in by growers both Central California and Southern California. The whole purpose of having the program is to increase grower returns. It is the easiest thing in the world to ship all the fruit.

Q. Are you acquainted with Mr. Roscoe, from Central California? [113] A. Yes, I am.

Q. Do you know what group he represents?

A. He represents Independent shippers, the independent shipper group, and I guess he represents American Foods. But I know Mr. Roscoe represented the independent growers.

Q. Do you ever recall hearing Mr. Roscoe say at a meeting of the Committee that the people that he represented wanted to get a price for their oranges and did not want to market all of them?

A. Well, he was the same as everyone else and I do remember him saying that this was their policy.

Q. Mr. Street, were you present on the two occasions when Mr. Luther Woodall was present at the meetings of the Navel Orange Administrative Committee?

A. I don't remember the date but I remember that Mr. Woodall was present at two meetings.

Q. And were you present when Mr. Coogan testified on direct examination regarding statements that were made by Mr. Woodall?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

A. I was.

Q. And do you concur in the statements made by Mr. Coogan as to what he said?

A. I don't remember all the statements that he made.

Q. Well, let me ask you specifically, do you recall whether Mr. Woodall stated to the Committee that regardless of [114] what they did concerning prorate in Central California, he and his organization were going to ship all of their oranges?

A. I don't remember the exact words, but I remember the intent of his statement was——

Mr. Weikert: Just a moment. I am going to object to his giving the intent.

Presiding Officer Gifford: That's right; he can give the substance.

Q. (By Mr. Griffin): All right. You can give us the substance of it.

A. The substance of it was that he was much displeased with the Administrative Committee and that he was going to move his crop.

Q. Did he state in substance that he was going to find a way to do it?

A. Well, in substance. And, Mr. Griffin, there is one point that I would like to cover on the table and I don't believe it has been given an Exhibit number, but the table comparing prices of Central and Southern California for this season.

Mr. Griffin: Mr. Presiding Officer, it might be

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

well to identify these. We would like to ask that the exhibit referred to be marked as the exhibit next in order.

Presiding Officer Gifford: That is the Sunkist f.o.b. prices of Central and Southern California, shipments by weeks [115] from March to May, and that will be identified as Exhibit No. 8.

Mr. Griffin: And this one also, please.

Presiding Officer Gifford: That will be No. 9, and that is the one referring to Sunkist.

Mr. Griffin: And I believe the next one, your Honor, refers to Sunkist Interstate Sales f.o.b. Prices by Weeks, for the week rather of May, 1956, only as distinguished from the three years.

Presiding Officer Gifford: That is right, and that will be identified as Exhibit No. 9.

Mr. Griffin: And the third one, which will be Exhibit No. 10.

Presiding Officer Gifford: Exhibit No. 10 will be identified, that is the industry domestic shipments and on-tree returns of Central California navels.

(Respondent's Exhibits Nos. 8, 9, and 10 were received in evidence.)

Q. (By Mr. Griffin): Mr. Street, I believe you had a further comment which you wished to make in regard to Exhibit No. 8.

A. No, Exhibit No. 9, the comparison of the two years' sales.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

Q. Yes, that would be the prices and sales volume.

A. Well, Mr. Griffin, through the month of March, as [116] shown in this exhibit No. 9, we had very excellent returns as is shown in columns 3 and 4 for Central California and Southern California. The returns for Southern California being about \$2.50 a carton f.o.b., and for Central California about \$2.25 a carton f.o.b. during three or four of the weeks. During this period as a result of the very late start there was tremendous pressure from Central California growers and shippers, as well as from Southern California growers and shippers, for the Committee to increase their shipments. Partly as a result of that the Navel Orange Administrative Committee set weekly allotments at 1350 cars a week, which was considerably above what we had been doing, which was around 1,000 to 1100 cars.

As a direct result of the increased shipments, sales did not keep pace with shipments so that for about four weeks in a row shipments exceeded sales. Now that is not shown on this exhibit, but that is on the records that Sunkist has. As a result of shipments exceeding sales over this period of time when we set these higher shipments—by higher shipments I mean 1350 cars—as a result of that our track and rolling supplies built up heavily. Cars were accumulating on the tracks unsold and the percentage of cars sold in the auctions was

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

building up far beyond the point that could be justified. And the result of that is shown here for the prices received for the weeks ending April 7th and April 14th. The price went off [117] so that Central California prices dropped to \$1.87 a carton as of April the 7th and April 14th it was \$1.75 a carton. And then for the South for two weeks it was \$2.16 and \$2.00.

Now that only happened in a very brief time from overshipment; so the Committee, seeing that the track and rolling supplies and the supplies unsold in the market was far past anything that could be sold, they took drastic action and cut it back, cut the allotment the next week to a thousand cars. As a result of that we are able to get the supply and demand situation back in balance. The results of that are shown in the prices during the succeeding weeks, where we recovered the market to the former level and perhaps even higher. I don't know how you can illustrate it in a better way, this problem or these problems of control of weekly shipments. Every time you slip over a certain amount, you run up against the market which is very, very sensitive with this competition of cheap oranges—and as I say, they are cheap. And then the price received for California-Arizona navels in the market at the wholesale level will almost double those received in the same market at the same time by Florida.

If you compare them with the prices for oranges,

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

for orange juice and frozen concentrate, it is three or four times. That is one of the reasons why it is so critical as to how much is shipped. And in order to increase the weekly volume with these thousands and thousands of cars, you have to go to the [118] consumer buying Florida oranges and get them to switch, and in order to do that it is necessary to lower the price as low as a dollar a carton.

Q. Mr. Street, petitioner here has alleged in his petition that all handlers should be exempt from the Navel Marketing Order No. 14 or that the order should be terminated. Now, based upon the testimony that you have given as to the history of what has happened during the past season, what would you say would occur or would have occurred during the past season if there had been no marketing order?

A. Mr. Griffin, no one could ever tell exactly what would happen. But I can speak from my own opinion based upon my experience and training in economics and my experience as head of marketing research at Sunkist and it is my opinion that instead of an f.o.b. return for the entire navel crop sold this year, which amounted to about \$2.22 or \$2.23 f.o.b. per carton, that the returns would have been not over \$1.50 a carton, which would have been \$3.00 a box f.o.b. under the old box basis. And I might say that my opinions are shared by people in the other marketing organizations outside of Sunkist. So it isn't just my guess. I don't think that

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

there is one single individual who knows anything about marketing could help but say that this would have been a disastrous season without control with the terrific supply backed up and with the very sensitive weekly amount that can be sold. If the market [119] will take 900 cars of navels, which it does on the average through the month of January, and perhaps 950 or a thousand during February, if you just increase that weekly volume 100 cars, the market goes over 25 cents or 50 cents a carton; if you increase it a couple hundred cars, you haven't got any market at all. And whether or not a large number of shippers with each one operating independently of the other would have the wisdom and cohesion and control of this thing and not overload the market, it is very doubtful.

Q. Has history ever demonstrated that has been done in the past?

A. My observation is that it hasn't. It is a little difficult to tell because we have had a marketing program almost every season since about 1934. One season we didn't have one, namely 1952-1953, and the navel orange season ended up with about 32 per cent to 33 per cent of parity. To put it another way, what it meant was red ink to most of the navel orange growers.

Now it is true that Central California growers fared very well on shipments up to about Christmas. That wasn't because they didn't have a prorate. It wasn't a committee to prorate but the

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

weather. So shipments held, were held in line by the weather in the early season of 1952-1953. After the shippers were able to get the fruit out and it got to the later part of the season, I think the figures show that it would be a [120] disastrous season.

Q. In the alternative, Mr. Street, the petitioner has asked that they be exempt from the provisions of the order. Do you think it would be fair or equitable to exempt this petitioner from the order and still require other handlers to comply with these restrictions?

A. Mr. Griffin, it would be an advantage to an individual handler to be exempt and have the other handlers have the burden of carrying the market. But it is obvious that that would be completely unfair to the other handlers.

Q. It is almost so obvious that it needs no explanation?

A. To me I cannot imagine how anyone could reach but one conclusion on that one.

Q. Do you have anything further that you would like to say in regard to the exhibits that have been offered and the testimony you have given?

A. I think we have pretty well covered it.

Mr. Griffin: I have no other questions.

Presiding Officer Gifford: Before we go into the cross-examination, do you want to offer Exhibits 8, 9 and 10?

Mr. Griffin: Yes, I am sorry. I would like to

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. D. Street.)

offer Exhibits 8, 9 and 10 in evidence at this time.

Presiding Officer Gifford: They will be admitted in evidence and made a part of the record.

(Respondent's Exhibits Nos. 8, 9 and 10 were received in evidence.) [121]

Cross-Examination

By Mr. Weikert:

Q. Florida oranges have never been subjected to volume regulation, have they?

A. To my knowledge, they haven't. They have grade and size.

Q. But never volume?

A. I don't believe they have.

Q. Mr. Street, in preparing Exhibit No. 8 did you include fruit sold within the State of California?

A. We did include all fruit sold both packed and loose.

Q. And that is including California?

A. On a packed basis. That is loose fruit.

Q. Does that include orchard run?

A. It includes all fruit, choice and orchard stands.

Q. In preparing Exhibit No. 10 did you proceed upon the assumption that all handlers sold their fruit at the prices received by Sunkist?

A. I did. Yes, I did that. We have no better assumption, Mr. Weikert.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

Q. You mean by that, you mean you do not have any available data?

A. We had to assume and we felt that it was the most reasonable assumption to make that their returns were comparable to Sunkist's and we have no reason to believe that they vary [122] very much.

Q. Would you say that it is a fact that the Southern California navel growers this past season shipped more of their fruit than they shipped in any other two previous seasons?

A. No question about it, that they shipped a larger proportion of their fruit than in any other two preceding seasons.

Q. And is the same true of Central California growers?

A. I don't recall—I would have to see the utilization figures on that. I do not know if we have those in exhibits or not but there isn't very much difference. They have shipped in fresh outlets during the past several seasons around 90 per cent so there is not very much difference.

Q. In view of the lateness of the hour I think that is all.

Mr. Griffin: I have just one question or so:

Redirect Examination

By Mr. Griffin:

Q. Referring to the exhibits, isn't it true that there were shipped a higher percentage of crop

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

from Central California this year than last year?

A. This shows 85.6 as compared to 83.69.

Q. In fact, they shipped more percentagewise this year than during six of the last ten years, approximately, haven't they, according to that exhibit? [123]

A. Well, the exhibit shows it, Mr. Griffin.

Mr. Weikert: That doesn't take export shipments into account?

The Witness: This is under regulation.

Mr. Weikert: So, if volume of export shipments varied from year to year, that would not be reflected in that exhibit, would it?

The Witness: No, it wouldn't, Mr. Weikert.

Q. (By Mr. Griffin): If the volume of export shipments was up in any one year and the shipments in regulated channels were comparable, the end result would be that more fruit was sold in the fresh fruit market than prior years, would it not?

Mr. Weikert: How is that again?

Mr. Griffin: Well, I will start over.

Q. (By Mr. Griffin): If the volume of export was up this year as compared to other years and your volume that was sold in fresh fruit channels was approximately the same—exports of fresh fruit—I mean the domestic regulated fresh fruit channels, the total volume of fruit sold in fresh fruit channels would be greater this year than in other years?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

A. That probably would be the result.

Presiding Officer Gifford: Is there anything more?

Mr. Griffin: I have nothing further. [124]

Mr. Weikert: That is all.

Presiding Officer Gifford: You may be excused.

(Witness excused.)

Mr. Griffin: I will call Mr. Hersey.

Whereupon,

GEORGE HERSEY

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Griffin:

Q. Will you give your full name and address?

A. George Hersey, Route 1, Box 75, Lindsay.

Q. And by whom are you employed?

A. The Navel Orange Administrative Committee.

Q. In what capacity?

A. As Central Supervisor.

Q. And how long have you occupied that position? A. Since the new Order went in.

Q. And that would be since 1953; is that correct?

A. Right.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of George Hersey.)

Q. What was your occupation prior to your present position?

A. I started work with them in 1941 as a field man and I was three and half years in the service.

Q. So except for the time that you were in the service, [125] you have been with them since 1941?

A. Right.

Q. Mr. Hersey, what were the conditions that existed in Central California with regard to weather and maturity of oranges during the early part of 1955-1956 season?

A. Well, it had a bad start, the fruit was late maturing, and they had lots of rains and the boys couldn't get the fruit picked.

Q. When you say the fruit was late maturing, compared to prior years how late?

A. Oh, two weeks or over, we had an off-bloom condition in lots of the groves there and when you get a few of those in test, it knocks the test clear down.

Q. Did this contribute to the quantity marketed and picked from Central California at this time?

A. It did.

Q. Would you say that that was the primary if not the only reason that only 2600 cars were marketed and moved at that time?

A. Yes, we would have moved a lot more fruit if we could have got it picked.

Q. Was there any restriction at all placed upon the marketing as far as you can see or as far as

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of George Hersey.)

you know by the Navel Orange Administrative Committee prior to Christmas?

A. No, we had two weeks of open movement and also two [126] weeks of early maturity, and those that applied for early maturity got it.

Q. And under the early maturity request and open movement, a handler can move as much as he wants?

A. If the Committee grants the early maturity.

Q. And during the past season weren't all requests for early maturity granted?

A. Right.

Q. Mr. Hersey, in your capacity as supervisor for the Navel Orange Administrative Committee, are you familiar with the condition of the fruit in Central California and its keeping qualities?

A. Yes.

Q. Were you here at the time that Mr. Seares testified? A. Yes, I heard his testimony.

Q. And would your testimony be substantially the same as his with regard to the keeping quality of the fruit?

A. Yes, I believe it depends on the time that you get the fruit started. In other words, when your fruit tests get started, then you have a shorter period of time.

Q. And except for the fact that they mature at different times, the keeping quality of Central California and Southern California navels is approximately the same?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of George Hersey.)

A. I can't tell too much about Southern California because I haven't worked down here for years. [127]

Q. Was there any real bad deterioration in the navel oranges in Central California after the first of April to the extent that it made them so they could not be marketed?

A. No, they could be marketed.

Q. Isn't it a fact that a large quantity were marketed at a very good price?

A. I imagine so. All I see is the bulletin, so I can't tell.

Mr. Griffin: Very well. I have no further questions.

Mr. Weikert: No questions.

Mr. Street: I would like to be recalled, Mr. Griffin, for just a moment, if I may, to clarify something.

Mr. Griffin: Very well.

Whereupon,

M. D. STREET

was recalled as a witness herein, and having been previously duly sworn, testified further as follows:

The Witness: I want to have all this testimony as absolutely correct as possible. In my earlier testimony with regard to Exhibits 8 and 9, Mr. Weikert asked me a question which I answered incorrectly, and it is evident that I did because it is in the title.

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of M. D. Street.)

In answering that, Mr. Weikert, I had in mind Exhibit No. 10 which does include your California sales. On our titles here for Exhibits 8 and 9, the title says, "Interstate Sales," which [128] would exclude California sales, and I am sorry for that wrong information on your question.

Mr. Weikert: O.K., thank you.

Presiding Officer Gifford: Is there anything further? Very well, you may be excused.

(Witness excused.)

Mr. Griffin: I will call Mr. Beard.

Whereupon,

WILFORD S. BEARD

was called as a witness by and on behalf of the Respondent, and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Griffin:

Q. What is your full name and address, Mr. Beard, your business address?

A. Wilford S. Beard; my business address is Room 1005, 1031 South Broadway, this building.

Q. By whom are you employed, Mr. Beard, and in what capacity?

A. I am Resident Agent, Program Appraisal and Audit Division, Agricultural Marketing Service, U. S. Department of Agriculture.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Wilford S. Beard.)

Q. In this capacity, Mr. Beard, were you called upon to make an examination of the books and records of Lo Bue Brothers? [129]

A. Yes.

Q. And in connection with the examination of those books and records, did you also examine the books and records of the Navel Orange Administrative Committee? A. Yes.

Q. Will you please tell us what the books and records showed with regard to the prorate which was available for the week ending at 12:01 a.m. on April 8th and the shipments that were made by Lo Bue Brothers, and the prorate that was available for the period ending at 12:01 a.m. April 15th, and the shipments made during that prorate period?

Mr. Weikert: Didn't Mr. Coogan cover that?

Mr. Griffin: I don't believe he covered it in exact figures.

The Witness: May I use my notes, crude as they are?

Mr. Weikert: I would like to know what this is.

Q. (By Mr. Griffin): Mr. Beard, what is the paper you refer to?

A. Simply my reference notes showing in totals.

Q. Were these notes made from the records that you have examined?

A. Those notes reflect the end results of my findings, yes.

Mr. Weikert: There must be some better records than this.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Wilford S. Beard.)

Mr. Griffin: Those are the original notes, Mr. Weikert, [130] which are the best evidence, for refreshing his recollection.

Mr. Weikert: I know, but this purports to set forth what their adjusted allotments were.

Mr. Griffin: Well, I asked him whether or not he had examined the records of the Orange Administrative Committee to ascertain the allotments. If you prefer to have Mr. Coogan back on the stand, I will have him do so and testify from the records.

Mr. Weikert: Well, if Mr. Beard admits they are crude——

Presiding Officer Gifford: Off the record.

(Discussion off the record.)

Presiding Officer Gifford: Back on the record.

Q. (By Mr. Griffin): Mr. Beard, while you are on the stand you might give us the shipments then and then we will ask Mr. Coogan to give us the allotments, the adjusted allotments.

Do you have the shipments that were made by Lo Bue Brothers on Saturday, April 7th?

A. Yes.

Q. How many cartons were shipped?

A. 23,416.

Mr. Weikert: How many?

The Witness: 23,416.

Q. (By Mr. Griffin): And how many cartons were shipped on Sunday, April 8th? [131]

A. 7,433.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Wilford S. Beard.)

Q. Now, Mr. Beard, do you have the figures covering the total shipments that were made between the dates of 12:01 a.m. on April 1st through April 6th?

A. I don't have it broken down that way, Mr. Griffin.

Q. Can you give it to us for each of those days then?

A. There were a total of 35,779 cartons shipped during the week ending April 8th.

Q. Very well. That is all right.

Mr. Weikert: What was that?

The Witness: 37—I'm sorry, 37,799.

Mr. Weikert: And that was during the week ending April 8th?

The Witness: Yes, to 12:01 a.m.

Mr. Weikert: That is a duplication of this other thing.

Mr. Griffin: Well, it includes those other figures.

Q. (By Mr. Griffin): How many cartons were shipped during the week of April 15th?

A. 16,281.

Q. And 7,433 of those were made on Sunday, April the 8th? A. Yes.

Q. Do you have the number of cartons that were shipped on Monday, April 9th?

A. 8,848. [132]

Q. And on Tuesday, April 10th?

A. I will have to retract that. That includes Monday and Tuesday.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Wilford S. Beard.)

Q. Your 8,000 figure or your 10,000 figure?

A. Yes, 8,848.

Q. And that includes Monday and Tuesday?

A. Yes.

Q. Do you have them broken down for the other days during the week?

A. Not with me, no.

Mr. Griffin: Very well, I have no other questions.

Mr. Weikert: I have no questions.

Presiding Officer Gifford: You may stand aside.

(Witness excused.)

Whereupon,

M. T. COOGAN

was recalled as a witness by and on behalf of the Respondent, and having been previously sworn, was examined and testified further as follows:

Redirect Examination

By Mr. Griffin:

Q. Mr. Coogan, you have previously appeared and testified in this hearing?

A. Yes, sir.

Q. Do you have with you the records of the Navel Orange [133] Administrative Committee pertaining to Lo Bue Brothers?

A. Yes, sir.

Q. Particularly as those records reflect prorate allotments made available to this concern?

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of M. T. Coogan.)

A. Yes, sir.

Q. Will you please advise us what the allotment was to Lo Bue Brothers for the period ending at 12:01 a.m. on April 8th, 1956?

A. They were allowed from the Committee 10,428 boxes. That is their advance allotment.

Mr. Weikert: Boxes or cartons?

The Witness: I am sorry; cartons, 10,428.

Q. (By Mr. Griffin): And were there some adjustments made?

A. There was an adjustment caused to be coming back to them that week from loans of 892 cartons. So that should be a total of 11,320 as the adjusted allotment for that particular week.

Q. What was the adjustment for the week ending on, ending at 12:01 a.m. April 15th?

A. The original allotment was 8,702. The previous week they had overshipped 10,000—I'm sorry, overshipped 1,043, which must be deducted. They owed to other handlers 262, and they received from other handlers 36, so their adjusted allotment would be 7,433 cartons for that week. [134]

Mr. Griffin: I have no further questions.

Mr. Weikert: No questions.

Presiding Officer Gifford: If there is nothing further, you may stand aside.

(Witness excused.)

Mr. Griffin: That concludes the testimony on behalf of the Government.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

Presiding Officer Gifford: Is there any rebuttal?

Mr. Weikert: I would like to recall Mr. Lo Bue for two questions.

Whereupon,

MARIO LO BUE

was recalled as a witness on behalf of the Petitioner and, having been previously duly sworn, was examined and testified further on rebuttal as follows:

Direct Examination

By Mr. Weikert:

Q. Mr. Lo Bue, prior to this day have you ever heard of the Little Industry Committee?

A. No, sir, I never did.

Q. Have you any idea as to how one Theodore Roberts came to be a representative of the Independent Handlers in Central California?

A. On the Committee?

Q. Yes. [135]

A. Well, I never heard of the Little Industry Committee. Period.

Mr. Weikert: You may cross-examine.

Cross-Examination

By Mr. Griffin:

Q. Are you acquainted with Mr. Dick Stark?

A. I know him, but the fact is I haven't talked to him in five or six months or more.

Q. That would put it back to some time during

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

the early part of 1956. Did you at any time during the early part of 1956 discuss with him the problems of the Central California handlers as far as shipping navel oranges is concerned?

A. I don't recall it.

Q. But you do not recall of having ever discussed it with him? A. No.

Q. You did not know that he was a member of an organization of Central California shippers and growers that met weekly to consider their problems?

A. I did not.

Q. Do you know Mr. Luallen? A. Yes.

Q. Did you ever discuss with Mr. Luallen the problem of the independent growers and shippers in Central California?

A. Yes. He come to my office not in regard to that. He [136] came and sold—he represented Pen-Vate Sales Company—and he come in to sell me some of that.

Q. Did you discuss with him at any time the recommendations that should be made to the Navel Orange Administrative Committee on shipments?

A. That was only last week when I talked to him.

Q. And you didn't discuss with him, you didn't know him or discuss it with him?

A. I knew him because I bought Pen-Vate from him before; I have known him for quite a few years.

Q. Did you know Mr. Roscoe up there?

Plaintiff's Exhibit No. 5—(Continued)

(Testimony of Mario Lo Bue.)

A. I couldn't pick him out if I saw him. I know I have met him but I couldn't picture him.

Q. Did you ever call him on the telephone and discuss with him what ought to be shipped during any one week? A. No.

Q. Are you member of the Independent Growers and Shippers Association up there?

A. No; in fact, I never met Mr. Tyrrell until just the other day.

Q. And you are not a member of any independent association in Central California? A. No.

Q. Are you a member of any association?

A. No. [137]

Mr. Griffin: That is all.

Mr. Weikert: What is Pan-Vate?

The Witness: It is a so-called soil conditioner.

Mr. Weikert: I see. I was just curious.

Mr. Griffin: I have just a couple of other things.

Presiding Officer Gifford: All right.

Q. (By Mr. Griffin): Mr. Lo Bue, do you know whether Mr. Luther Woodall, your sales manager, is a member of any independent shippers' association in Central California?

A. I don't know that.

Q. You don't know whether he is or isn't?

A. I never heard him mention that he was.

Q. But you really don't know?

A. I never heard him say; he never told me so to this day. I might add that I belong to the Agriculture Committee or some such committee as that.

Plaintiff's Exhibit No. 5—(Continued)
(Testimony of Mario Lo Bue.)

Mr. Weikert: Well, I will ask this: Insofar as you know, is there any independent shippers' association in Central California?

The Witness: I have heard there is.

Mr. Weikert: You heard that there was?

The Witness: Well, part of these boys down South, they all belong in it. It is not Central California; it is an organization of these independents in Southern California and Central [138] California, both, but I don't belong to it.

Presiding Officer Gifford: Is there anything further from either of you?

Mr. Weikert: I have nothing further.

Mr. Griffin: Nothing further.

Presiding Officer Gifford: Off the record.

(Discussion off the record.)

Presiding Officer Gifford: On the record.

(Witness excused.)

Presiding Officer Gifford: The time for filing briefs will be fixed as July 9, 1956. That means that they must be prepared and deposited in the United States mail on or before the close of that day. They must be addressed to the Hearing Clerk, Room 112, Administration Building, U. S. Department of Agriculture, Washington 25, D. C. The briefs must be printed or typed or mimeographed. They may be signed either by the attorney or by the party himself or the representative of the party. They need

Plaintiff's Exhibit No. 5—(Continued)

not be verified, but they must be based upon the testimony in this record.

Are there any questions?

Mr. Weikert: Is that an original and three copies?

Presiding Officer Gifford: They must be filed in four copies, the original and three, and addressed to the Hearing Clerk at the address given, on or before July 9, 1956.

If there is nothing further, the hearing will stand [139] adjourned at 6:30 p.m.

(Whereupon, on Thursday, June 14, 1956, at 6:30 o'clock p.m., the hearing in the above-entitled matter was closed.)

Received in evidence March 12, 1958. [140]

DEFENDANTS' EXHIBIT B

Agriculture Decisions Before the Secretary of
Agriculture, United States Department of
Agriculture

(No. 4879)

In re Lo Bue Bros. AMA Docket No. 14-1. Decided
December 3, 1956.

Order No. 14—Regulation of Shipments of Navel
Oranges—Validity of Weekly Prorate Orders

The petition alleges discriminatory restrictions on
weekly shipments of the 1955-1956 orange crop

Defendants' Exhibit B—(Continued)

from the Central California prorate district and unlawful regulation beyond the historical marketing season. The record in this proceeding contains no evidence of such discrimination. Because of the late maturity of the crop involved, adverse weather and changed economic conditions, the period of regulation was extended. The means selected by the Secretary to carry out the statutory policy of the act are found to be in accordance with law.

Mr. G. V. Weikert, of Los Angeles, California, for petitioner. Mr. John S. Griffin, for Agricultural Marketing Service. Mr. Glen J. Gifford, Hearing Examiner.

Decision by Thomas J. Flavin, Judicial Officer

Preliminary Statement

This is a proceeding under section 8c (15) (A) of the Agricultural Adjustment Act (1933) as reenacted and amended by the Agricultural Marketing Agreement Act of 1937 and subsequent amendments (7 U.S.C. 601 et seq.), The petitioner is a handler under Order No. 14, as amended (7 CFR 914.1 et seq.), issued under the act and regulating the handling of Navel oranges grown in Arizona and a designated part of California.

Under the order, regulation or restriction of the volume of weekly shipments of Navel oranges is a means adopted for carrying out the statutory policy

Defendants' Exhibit B—(Continued)

of establishing and maintaining such orderly marketing conditions for oranges grown in the production area as will tend to establish parity prices for such oranges. An administrative committee, the Navel Orange Administrative Committee, recommends and the Secretary issues regulations, i.e., weekly prorate orders, limiting the quantity of Navel oranges which may be shipped during weekly periods from the production area. The production area is separated into prorate districts with the individual producing regions possessing similar marketing periods grouped into the same prorate district. Generally, oranges are marketed from the different prorate districts at different times with some competition between districts during part of the period of marketing. The order further provides a method for allotting the total quantity of the regulated commodity, Navel oranges, which may be handled during a specified period so that such quantity may be equitably apportioned among all the handlers thereof. (See decision of the Secretary which formed the basis for Order No. 14 (18 F.R. 4708).

Petitioner complains of the action of the Secretary in restricting shipments of Navel oranges from the Central California prorate district, District No. 1. It is alleged in the petition, in effect, that insufficient quantities of 1955-1956 Navel oranges from the Central California district were permitted to be shipped each week resulting in regulation of the handling of such oranges beyond their historical

Defendants' Exhibit B—(Continued)

life; and that such regulation was arbitrary, capricious and unreasonable, defeated the declared policy of the act and deprived petitioner of property without due process of law in violation of the Fifth Amendment of the Constitution. Discrimination against petitioner also is averred because the Navel orange crop from the Southern California prorate district was allegedly prorated over a substantially shorter period beyond its historical marketing season. The petition prays that the restrictions complained of be terminated and that shipping restrictions extending beyond the historical life of the crop be prevented in the future.

An answer to the petition was filed by the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, on May 9, 1956. Respondent, in the answer, denied the material allegations of the petition and upheld the contested regulation of the 1955-1956 Central California Navel orange crop as in accordance with law and the terms of Order No. 14, as amended. A hearing upon the petition was held before Glen J. Gifford, Hearing Examiner, Office of Hearing Examiners, United States Department of Agriculture, in Los Angeles, California, on June 14, 1956. At the hearing, petitioner was represented by G. V. Wекert, Attorney at Law, Los Angeles, California. The respondent was represented by John S. Griffin, Attorney, Office of the General Counsel, United States Department of Agriculture. After the hearing, the

Defendants' Exhibit B—(Continued)

parties filed briefs. On September 28, 1956, the hearing examiner issued a report containing proposed findings of fact and conclusions and recommending that the petition be dismissed. The petitioner filed exceptions to the examiner's report.

Findings of Facts

1. Petitioner, Lo Bue Bros., is a partnership composed of Mario, Fred, and Joseph Lo Bue, whose address is 201 Sweetbriar, Lindsay, California. The petitioner is a handler subject to regulation under Order No. 14, as amended, which regulates the handling of Navel oranges grown in Arizona and a designated part of California.

2. Up to January 1, 1956, 2,626 cars, or 26.8 per cent, of the 1955-1956 tree crop of Navel oranges produced in the Central California district had been handled in domestic fresh trade channels as compared to approximately 46 per cent of each of the 1953-1954 and 1954-1955 tree crops so handled prior to January 1, 1954, and 1955, respectively. The relatively small percentage of the 1955-1956 Central California tree crop of Navel oranges handled prior to January 1, 1956, resulted from the delayed maturity of the crop and adverse weather conditions and not from any regulations imposed under the order. Central California handlers and producers lost the opportunity of handling a total of approximately 2,000 carloads of Navel oranges during No-

Defendants' Exhibit B—(Continued)

vember, and December, 1955 due to maturity and weather conditions.

3. Since the inception of Order No. 14, regulation of the handling of Navel oranges grown in the Central California district and the shipment of such oranges were completed as follows:

	Regulation of handling	Completion of shipments
1953-1954	March 12, 1954	April 9, 1954
1954-1955	April 9, 1955	May 7, 1955
1955-1956	May 21, 1956	June 4, 1956*

*A small quantity of Navel oranges from the 1955-1956 crop was shipped after June 4, 1956.

4. During the seven marketing seasons beginning 1944-1945 and ending 1950-1951, all the Navel oranges produced in Central California were marketed by April 15 of each year. Later marketing of such oranges has been experienced in recent years (see Finding of Fact 3) and is to be expected in the future due to changed economic conditions which make it impossible to market as large a volume of Navel oranges produced in Central California each week as was marketed weekly in prior years. Competition from frozen orange concentrate, canned juice, the greatly expanded Florida orange crop, and other commodities has reduced the weekly demand for Central California Navel oranges.

5. From March 3 through June 2, 1956, Navel oranges produced in the Southern California district sold at a premium over Central California Navel oranges of from 13 cents to 94 cents per carton, the usual spread being approximately 25 cents per car-

Defendants' Exhibit B—(Continued)

ton. From March 3, through May 5, 1955, during the 1954-1955 marketing season, Navel oranges produced in Central California generally sold at a premium over Southern California Navel oranges.

6. The weekly average interstate f.o.b. prices received during April, and May, 1956, by Sunkist for Navel oranges grown in Central California are as follows:

April 7	\$1.87	May 5	\$2.22
April 14	1.75	May 12	2.45
April 21	1.95	May 19	2.59
April 28	2.29	May 26	2.55

7. The on-tree returns to producers of Central California Navel oranges during the 1955-1956 seasons were the highest in history, except for a year during World War II when oranges were sold under price regulations and the on-tree returns for 1955-1956 were equalled.

8. Since the inception of Order No. 14, regulation of the handling of Navel oranges grown in the Southern California district and the shipment of such oranges were completed as follows:

	Regulation of handling	Completion of shipment
1953-1954	May 7, 1954	May 28, 1954
1954-1955	May 7, 1955	June 25, 1955
1955-1956	May 21, 1956	Not completed at time of hearing

9. The respective percentages of the tree crop of Navel oranges produced in Central California and in Southern California handled in fresh fruit channels under the order are as follows:

Defendants' Exhibit B—(Continued)

	Central California	Southern California
1953-1954	82.89	70.97
1954-1955	83.69	71.29
1955-1956	85.06	79.82*

*Through June 3, 1956

10. From October, 1955, through January, 1956, four and sometimes five grower members from the Central California district served on the Navel Orange Administrative Committee as compared with one or two grower members from the Southern California district, except from the January 5, 1956, meeting of the committee when each of these districts was represented by three grower members. When Southern California Navel oranges came into the market in appreciable numbers, representation on the administrative committee from that area was increased at the expense of grower representation from Central California.

11. William Luther Woodall, petitioner's sales manager, attended the March 15, and 29, 1956, meetings of the Navel Orange Administrative Committee and suggested at each meeting that approximately three-fourths of all Navel oranges permitted to be shipped from Central and Southern California during the subsequent weeks be allotted to Central California handlers. Further, he stated to the committee that he intended to ship all his Navel oranges regardless of the action of the Navel Orange Administrative Committee and that he would find a way to do it.

12. The petition in this proceeding was mailed

Defendants' Exhibit B—(Continued)

from Los Angeles, California, on Thursday, April 5, 1956. It was received and filed by the Hearing Clerk, United States Department of Agriculture, Washington, D. C., on Monday, April 9, 1956.

13. During the weekly regulation period ending 12:01 a.m., April 8, 1956, petitioner handled at least 23,416 cartons of Navel oranges in excess of its allotment and during the weekly regulation period ending 12:01 a.m., April 15, 1956, petitioner shipped 8,848 cartons of Navel oranges in excess of its allotment.

14. On April 12, 1956, a temporary restraining order was issued in the United States District Court for the Southern District of California, Northern Division, enjoining petitioner from further violating the order. Petitioner consented to a permanent injunction, effective April 20, 1956, enjoining it from violating Order No. 14 and any regulation issued thereunder.

Conclusions

I.

Petitioner complains of the extended period during which the 1955-1956 Central California Navel orange crop was subject to volume regulation.¹ It is

¹This proceeding does not become moot because the crop year in question has passed and the contested weekly prorate orders have, by their own terms, expired. It was intended by section 8c (15) (A) of the act to give an aggrieved handler a "day in

Defendants' Exhibit B—(Continued)

contended, in effect, that insufficient quantities of such oranges were permitted to be shipped each week resulting in regulation of the handling of the crop beyond its historical life. Such action is characterized, in part, as being arbitrary, capricious, unreasonable and inequitable.

Some basic principles must be kept in mind when examining the validity or reasonableness of an order, a provision thereof, or a regulation issued thereunder. "The background and legislative history

court" before the Secretary in his quasi-judicial capacity. It is clear, however, that after the Secretary has issued a prorated order, the time for determining its validity in a section 8c (15)(A) proceeding may be wholly inadequate for any effective relief. Of course, an application for interim relief might be entertained. Moreover, unless the rights of the parties under the regulation here complained of are determined, the situation presented on the record may again arise without possible remedy. We think, in these circumstances, that even though we are without power to grant the specific relief prayed with respect to the 1955-1956 crop, our duty is to determine the questions presented. Judicial decision of important questions that are likely to recur should not be defeated by short-term orders, capable of repetition, yet evading review. *Southern Pacific Terminal Company v. Interstate Commerce Commission and Young*, 219 U. S. 498 (1911); *Eastern Airlines, Inc., v. Civil Aeronautics Board*, 185 F. 2d 426, 427 (D.C. Cir. 1950); *Gay Union Corporation, Inc., v. Wallace*, 112 F. 2d. 192 (D.C. Cir. 1940), cert. denied, 310 U.S. 647 (1940); *Boise City Irr. & Land Co. v. Clark*, 131 F. 415 (9th Cir. 1904).

Defendants' Exhibit B—(Continued)

of the Agricultural Marketing Agreement Act of 1937, as amended, leave no doubt that Congress gave the Secretary broad discretion in its administration." *Queensboro Farm Products, Inc., v. Wickard*, 137 F.2d 969, 977 (2d Cir. 1943). The "terms of the Order are largely matters of administrative discretion" and the technical details "are left to the Secretary and his aides." *Stark v. Wickard*, 321 U. S. 288, 310 (1944). The responsibility of selecting the means of achieving the statutory policy and the relationship between the remedy and policy are peculiarly matters for administrative competence. *American Power & Light Co. v. Securities and Exchange Commission*, 329 U.S. 90, 112 (1946); *Secretary of Agriculture v. Central Roig Refining Co.*, 338 U.S. 605, 613-614 (1950). The test of reasonableness or substantive due process is a check upon such administrative discretion, and it may be stated roughly as an inquiry as to whether the means selected to achieve the statutory policy bear a reasonable and substantial relationship to the accomplishment of such policy and whether such means are arbitrary or capricious, *Nebbia v. New York*, 291 U.S. 502, 525, 537 (1934); *Lapides v. Clark*, 176 F. 2d 619 (D.C. Cir. 1949), cert. denied, 338 U. S. 860 (1949); *North American Company v. Securities & Exchange Commission*, 133 F. 2d 148 (2d Cir. 1943), aff'd, 327 U.S. 686 (1946); *In re Clover Leaf Dairy Company, et al.*, 15 A.D. 339 (1956).

Defendants' Exhibit B—(Continued)

Delayed maturity of the 1955-1956 Central California Navel orange crop and adverse weather conditions during the months of November, and December, 1955, prevented part of the crop from being marketed prior to January 1, 1956. Only 26.8 per cent of the 1955-1956 Central California crop was marketed prior to January 1, 1956, as compared to approximately 46 per cent of the crop marketed prior to January 1 of each of the two preceding crop years. In earlier seasons greater percentages, reaching as high as 81.55 per cent with respect to the 1945-1946 crop, were marketed prior to January 1. Central California lost the opportunity of handling approximately 2,000 carloads of Navel oranges during the months of November, and December, 1955, due to adverse weather conditions and late maturity of the crop. Thus, the Secretary was faced with the problem of regulating, with the aid of the Navel Orange Administrative Committee, the marketing after January 1, 1956, of an additional 2,000 carloads of oranges which would ordinarily have been sold. Coupled with this situation were changed economic conditions which made it impossible to market or handle as large a volume of Navel oranges each week as were marketed weekly prior to the promulgation of Order No. 14. Competition from frozen orange concentrate, canned juice, the greatly expanded Florida orange crop, and other commodities reduced the weekly demand for California Navel oranges. The Secretary had

Defendants' Exhibit B—(Continued)

the alternative of extending the shipping season for such oranges or permitting the shipment of excessive quantities into the market, that is, the marketing of Central California Navel oranges in keeping with past marketing history without regard to changing economic conditions. The shipment of excessive quantities of Navel oranges has always brought lower returns to the grower. While the regulated marketing of the 1955-1956 Central California Navel orange crop was completed later than in previous years, the record does not indicate that the contested volume regulation of the crop by the Secretary was arbitrary or unreasonable, especially in view of weather and maturity conditions and the decreased weekly demand for California Navel oranges. It must be concluded that the restriction of the handling of the crop in question was reasonable, appropriate to a permissible end and reflected the particular conditions prevailing in the area. Petitioner's allegation that the late marketing of the 1955-1956 crop caused a deterioration thereof has not been established. On the contrary, the evidence indicates that excellent returns were received for this crop in the later months and that any premium for Southern California Navel oranges over Central California Navel oranges was unrelated to late marketings during the months of April, and May, 1956.

Petitioner further avers that the declared purpose of the act was defeated by the contested treat-

Defendants' Exhibit B—(Continued)

ment of the crop in issue. The purpose of the weekly prorate orders clearly falls within the statutory policy of the act² and the record indicates that rather than defeat such purpose, the restrictions imposed were instrumental in attaining excellent returns to growers for the 1955-1956 crop.

II.

Discrimination against petitioner is charged because the Southern California Navel orange crop was allegedly prorated over a substantially shorter period beyond its historical marketing season than was the 1955-1956 Central California Navel orange crop. In effect, petitioner is contending that Central California handlers should have been allowed to handle more of their crop before Southern California handlers were permitted to ship as they did. The fact that a particular regulation "may demonstrably be disadvantageous to certain areas or persons" is not enough to constitute a violation of the due process clause. *Secretary of Agriculture v. Central Roig Refining Co.*, supra at 617-619; *In re Central Dairy Products Company*, 12 A.D. 303, 312 (1953), and cases cited therein. Moreover, pe-

²Section 2(1) of the act (7 U.S.C. 602 (1) declares it to be the policy of the act, in part, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as would establish parity prices to the growers thereof. See also *In re Beatrice Foods Co. et al.*, 15 A.D. 767 (1956); *In re Terrace Park Dairy et al.*, 12 A.D. 1383, 1393 (1953).

Defendants' Exhibit B—(Continued)

petitioner has not established herein that the disputed regulation of the Central and Southern California Navel orange crops was disadvantageous to it or to the Central California area generally and has failed to sustain its burden of proof of discrimination by other than remote or fanciful evidence. See *Wawa Dairy Farms, Inc., v. Wickard*, 56 F. Supp. 67 (E.D. Pa. 1944), *aff'd*, 149 F.2d 870 (3d Cir. 1945); *United States v. Rock Royal Co-operative, Inc.*, 307 U.S. 533, 567-568 (1939); *Pacific States Box & Basket Co. v. White*, 296 U.S. 176, 185 (1935). Indeed, we find no evidence of discrimination against petitioner in the record. Petitioner's contention that the regulation of the marketing of the 1955-1956 California Navel orange crop favored shippers from Southern California is unsupported by evidence. During the past ten regulated crop years producers and handlers from Central California have always marketed a substantially larger part of their crop in regulated fresh market outlets than have the handlers and shippers in Southern California. In fact, petitioner marketed almost five per cent more of its 1955-1956 crop in fresh fruit channels than the average marketed by handlers and producers from Southern California this past marketing season.³ In addition, any price differential between Southern and Central California Navel oranges

³Moreover, petitioner marketed 0.69 per cent more of its 1955-1956 Navel orange crop in fresh market channels than the average marketed by handlers in Central California.

Defendants' Exhibit B—(Continued)

appears to have resulted from the characteristics of the two crops rather than the time of marketing of the respective crops.

In the absence of any proof or finding of discrimination, petitioner's argument that Central California did not have fair or adequate representation on the Navel Orange Administrative Committee at the time of the alleged discrimination is of no validity or effect. In any event, representation on the committee from the Central California area during the 1955-1956 season does not appear to us to be unreasonable or inequitable. From October 1955 through January 1956, four and sometimes five grower members from Central California served on the administrative committee as compared with one or two grower members from Southern California. This was the period when Central California Navel oranges were being shipped in greatest volume. When Southern California Navel oranges came into the market in appreciable numbers, representation on the committee from that area was increased at the expense of Central California's grower representation thereon. We do not consider such action to be unfair or inequitable.

III.

We come to the question as to whether the petition was filed in good faith or for delay or immunity from prosecution under section 8c(14) of the act (7 U.S.C. 608c(14)). The fruit and vegetable programs

Defendants' Exhibit B—(Continued)

under the act are seasonable in nature and involve mainly restrictions upon shipments or sales. Since immunity from fines is provided by section 8c(14) for violations of an order issued under the act during the pendency of a section 8c (15) (A) petition filed and prosecuted in good faith, there is afforded an opportunity for handlers to defeat the order by unregulated shipments by the mere expedient of filing a petition since the shipping season is over before final decision can be had upon the petition.⁴ In some instances in the past, the filing of the petition has been a subterfuge. See *In re J. G. Bryson*, 1 A.D. 301 (1942).

The record in this proceeding contains some evidence of lack of good faith. (See Findings of Fact, 11, 12, and 13.) However, since we are dismissing the petition upon the merits, we do not feel it necessary also to conclude that the petition should be dismissed for lack of good faith and, therefore, no finding or conclusion is made on this part of the case insofar as this proceeding is concerned. Cf. *In re Kroells Packing Company*, 10 A.D. 774 (1951).

In conclusion, the regulation under Order No. 14,

⁴Of course, an action pursuant to section 8a(6) of the act (7 U.S.C. 608 a(6)) is available to enjoin a handler from violating an order issued under the act and a temporary restraining order and injunction were entered against the petitioner herein in the United States District Court for the Southern District of California.

Defendants' Exhibit B—(Continued)

as amended, of the handling of the 1955-1956 Central California Navel orange crop complained of by petitioner is in accordance with law and the petition should be dismissed.

All contentions of the parties presented for the record have been considered and whether or not specifically mentioned herein, any suggestions, requests, etc., inconsistent with this decision are denied.⁵

Order

In view of the foregoing, the relief requested by the petitioner is denied and the petition is dismissed.

(No. 4880)

In re Florida Fresh-Up Daily Juices, Inc. AMA
Docket No. 33-2. Decided December 26, 1956.

Application to Dismiss Petition—Adequacy of
Petition—Dismissal

The factual statements contained in the petition are sufficient to permit respondent to file an answer thereto.

⁵In answer to the statement of the counsel for petitioner that to his knowledge no 8c (15)(A) petition has ever been granted, we need only refer him to a few of the instances where the petitioner was successful in such a proceeding. See e.g., *In re Walgreen Co.*, 14 A.D. 541 (1955); *In re Queensboro Farm Products*, 13 A.D. 589 (1954); *In re Ideal Farms Dairy Products, Inc., et al.*, 8 A.D. 1119 (1949).

Defendants' Exhibit B—(Continued)

Hamilton, Stephenson and Straughn, of Winter Haven, Florida, for petitioner. Mr. Harry Platinik, for Agricultural Marketing Service.

Decision by Thomas J. Flavin, Judicial Officer.

Received in evidence March 11, 1958.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court hereby certify the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above matter.

A. The foregoing pages numbered 1 to 214, inclusive, containing the original:

Complaint.

Answer.

Minute Order 9/16/57.

Stipulation of Facts and Issues.

Minute Order 10/21/57.

Supplemental Stipulation of Facts; and Additional Issue.

Application for Leave to File Motion for Summary Judgment and Order thereon, etc.

Minute Order 11/15/57.

Defendant's Statement and Brief in Opposition to Motion for Summary Judgment.

Order on Motion for Summary Judgment.

Minute Order 12/30/57.

Notice of Motion and Motion to Compel Testimony, etc.

Minute Order 2/24/58.

Order on Motion to Compel Testimony.

Trial Memorandum.

Supplemental Trial Memorandum.

Minute Order 3/11/58.

Minute Order 3/12/58.

Motion for Leave to Submit Second Supplemental Trial Memorandum, etc.

Memorandum of Decision.

Objections to Findings.

Defendant's Proposed Findings of Fact, and Conclusions of Law, and Judgment.

Motion for Reconsideration and Clarification of Decision.

Order Settling Findings of Fact, and Conclusions of Law, etc.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record on Appeal.

B. Plaintiff's Exhibits:

#1—(Paragraphs 13 thru 16 of Stipulation of Facts and Issues.)

#2—(Paragraphs 17 thru 22 of Stipulation of Facts and Issues.)

#3—(Paragraphs 1, 2, 3, 4, 5, 6 & 7 of Supplemental Stipulation of Facts and Issues.)

#4—(Paragraph 8 of Supplemental Stipulation of Facts and Issue.)

#5—(Manuscript, pages 1 thru 140 U. S. Dept. of Agriculture—June 14, 1956.)

#6—(Exhibits Marked 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 of Domestic Fresh Shipments.)

#7—(Four Pages of Certificate of Presiding Officer Docket No. AMA No. 14-1.)

Defendant's Exhibits:

A—(Paragraphs 13 thru 16 of Stipulation of Facts and Issues.)

B—(Pamphlet—U. S. Dept. of Agriculture—Agriculture Decisions.)

C. One volume of Reporter's Transcript of Proceedings had on: March 11 and 12, 1958.

D. Deposition of Mrs. Kay Bottomley, Dorothy DePew, G. A. Wallenman, William Luther Woodall, James H. Woodall, Mario Lo Bue, Fred Lo Bue.

E. Continuation of Depositions of: Mario Lo Bue, William Luther Woodall, G. A. Wallenman.

I further certify that my fee for preparing the foregoing record, amounting to \$2.40, has not been paid by appellant.

Dated: October 24, 1958.

JOHN A. CHILDRESS,
Clerk.

[Seal] By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 16230. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Lo Bue Brothers, a partnership, Mario Lo Bue, Fred Lo Bue and Joseph Lo Bue, partners and William Luther Woodall, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed and docketed: October 27, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

[Undocketed]

UNITED STATES of AMERICA,

Plaintiff-Appellant,

vs.

LO BUE BROTHERS, a Partnership; MARIO LO
BUE, FRED LO BUE and JOSEPH LO
BUE, Partners; and WILLIAM LUTHER
WOODALL,

Defendants-Appelles.

STATEMENT OF POINTS ON APPEAL

In accordance with the requirements of Rule 17(6) of the Rules of the United States Court of Appeals for the Ninth Circuit, the Plaintiff, i.e., Appellant, hereby submits and files the following statement of points on which the Plaintiff-Appellant intends to rely:

1. The District Court erred in finding and concluding that the Defendants', i.e., Appellees', shipments of Navel oranges in excess of the relevant quotas or allotments under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 1952 ed. § 601 et seq.) were not "willful" within the meaning of § 8a(5) of the Act (7 U.S.C. 1952 ed., § 608a(5)).

2. The shipments of Navel oranges by the Defendants, i.e., Appellees, in excess of the relevant

quotas or allotments pursuant to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 1952 ed. § 601 et seq.) were not accidental, involuntary, or unintentional—that is to say, the Defendants knowingly and intentionally made the excess shipments of Navel oranges involved in this case—and accordingly the District Court erred in finding and concluding that the excess shipments of Navel oranges by the Defendants were not “willfully” made within the meaning of § 8a(5) of the Act (7 U.S.C. 1952 ed., § 608a(5)).

3. The petition filed by the Defendants, i.e., appellees, under § 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 1952 ed. § 608c(15) (A)) was not filed in the United States Department of Agriculture until after the Defendants’ shipments of Navel oranges in excess of the relevant quotas or allotments pursuant to the Act, and accordingly the District Court erred in finding and concluding that the excess shipments of Navel oranges, involved in this suit, by the Defendants were not “willfully” made within the meaning of § 8a(5) of the Act (7 U.S.C. 1952 ed., § 608a(5)).

4. The Defendants, i.e., Appellees, relied on an erroneous opinion to the effect that their petition under § 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 1952 ed. § 608c (15)(A)) had been filed in the United States Department of Agriculture, and accordingly the

District Court erred in finding and concluding that because the Defendants relied on such opinion—and subsequently shipped Navel oranges in excess of the relevant quotas or allotments under the Act—the Defendants' shipments of Navel oranges in excess of the relevant quotas or allotments under the Act were not "willfull" within the meaning of § 8a(5) of the Act (7 U.S.C. 1952 ed. § 608a(5)).

5. The Defendants, i.e., Appellees, did not file and prosecute their petition under § 8c(15)(A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 1952 ed. § 608c(15)(A)) in good faith and not for delay, and accordingly the District Court erred in finding and concluding that the excess shipments of Navel oranges, involved in this suit, by the defendants were not "willfully" made within the meaning of § 8a(5) of the Act (7 U.S.C. 1952 ed. §608a(5)).

6. The filing of a petition under § 8c(15)(A) of the Act (7 U.S.C. 1952 ed. § 608c(15)(A))—either before or after the shipments of Navel oranges by the Defendants, i.e., Appellees, in excess of the relevant quotas or allotments under the Agricultural Marketing Agreement Act of 1937—does not, as a matter of law, exempt the Defendants from liability under the provisions of § 8a(5) of the Act (7 U.S.C. 1952 ed. § 608a(5)) in this case, and accordingly the District Court erred in finding and concluding that, because the Defendants relied on legal advice to the effect that the filing of a petition

under § 8c(15)(A), if filed in good faith, would exempt them from such liability, the shipments of Navel oranges in excess of the relevant quotas or allotments under the Act were not “willfully” made within the meaning of § 8a(5) of the Act.

7. The Defendants, i.e., Appellees, relied on erroneous legal advice in making their shipments of Navel oranges in excess of the relevant quotas or allotments under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 1952 ed. § 601 et seq.), and accordingly the District Court erred in finding and concluding that because the Defendants relied in good faith on such legal advice, the Defendants’ excess shipments of Navel oranges were not “willfully” made so as to subject the defendants to liability pursuant to § 8a(5) of the Act (7 U.S.C. 1952 ed. § 608a(5)).

8. The District Court erred in finding and concluding that—in view of its findings and conclusions that the Defendants, i.e., Appellees, accepted, believed, and relied in good faith on the advice given to them by a reputable attorney to the effect that the filing of a petition, in good faith, by the Defendants pursuant to § 8c(15)(A) of the Act (7 U.S.C. 1952 ed. § 608c(15) (A)) would, as a matter of law, exempt the Defendants from liability for penalties under the Act with respect to shipments during the period from the filing of such petition to the decision thereon by the administrative agency, unless shipments were enjoined by a District Court,

and that the Defendants accepted, believed, and relied in good faith on such advice given to them by the attorney and filed or undertook to file such a petition under § 8c(15)(A) of the Act—the Defendants' shipments of Navel oranges in excess of the relevant quotas or allotments under the Act were not "willful" within the meaning of § 8a(5) of the Act (7 U.S.C. 1952 ed. § 608a(5)).

9. The findings and conclusions by the District Court that the shipments of Navel oranges by the Defendants, i.e., Appellees, in excess of the relevant quotas or allotments pursuant to the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 1952 ed. § 601 et seq.) were not "willfully" made within the meaning of § 8a(5) of the Act are, on the basis of the record in the case, clearly erroneous.

10. The findings and conclusion by the District Court that the defendants, i.e., appellees, accepted and believed the advice of a reputable attorney and acted in good faith in reliance thereon in making the shipments of Navel oranges in excess of the relevant quotas or allotments pursuant to the Agricultural Marketing Agreement Act of 1937 (7 U. S. C. 1952 ed. § 601 et seq.) and in so doing exercised ordinary and reasonable care and caution and did not knowingly, intentionally, or wilfully exceed the relevant quotas or allotments are, on the basis of the record in the case, clearly erroneous.

11. The District Court erred in failing to find, conclude, and enter judgment to the effect that the

shipments of Navel oranges by the defendants, i.e., appellees, in excess of the relevant quotas or allotments pursuant to the Agricultural Marketing Agreement Act of 1937 (7 U. S. C. 1952 ed. § 601 et seq.) were “wilfully” made within the meaning of § 8a(5) of the Act (7 U.S.C., 1952 ed. § 608a(5)), and that the defendants are liable under the terms of § 8a(5) of the Act.

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[Endorsed]: Filed October 28, 1958.